

Exhibit 12

Plaintiffs' Corrected Averment of Jurisdictional Facts and Evidence
and/or Statement of Facts as to Defendant Al Rajhi Bank
Pursuant to Rule 56.1

In the Matter Of:

In re: Terrorist Attacks on September 11, 2001

JONATHAN M. WINER

January 12, 2024



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JONATHAN M. WINER
In re: Terrorist Attacks on September 11, 2001

January 12, 2024

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1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3
4 In re: Terrorist Attacks
5 on September 11, 2001

6 03 MDL 1570 (GBD) (SN) ECF Case

7 _____/

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9 The Above-Captioned Video-Recorded Deposition of

10 JONATHAN M. WINER

11 9:28 a.m. - 3:35 p.m.

12 January 12, 2024

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23 REPORTED BY:

24 STEVEN POULAKOS, RPR

25 JOB NO: J10746455

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January 12, 2024

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8 The above-captioned video-recorded
9 deposition of JONATHAN M. WINER was held on Friday,
10 January 12, 2024, 2024, commencing at 9:28 a.m., at the
11 Law Offices of Cozen O'Connor, 1200 19th Street, N.W.,
12 Washington, D.C. 20036, before Steven Poulakos, Notary
13 Public.

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20 REPORTED BY: Steven Poulakos, RPR
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11 ALSO PRESENT: ABDULRHMAN AL and KIM JOHNSON - VIDEO
12 OPERATOR
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P R O C E E D I N G S

- - -

THE VIDEOGRAPHER: Here begins the video recorded deposition of Jonathan Winer taken in the matter in re terrorist attacks on September 11th, 2001, in the U.S. District Court, Southern District of New York. Today's date is January 12th, 2024. The time is 9:28. This deposition is being held at 1200 19th Street, Northwest, Washington, D.C. The court reporter is Steve Poulakos. The video camera operator is Kim Johnson both on behalf of Esquire.

Will counsel please introduce yourselves and state whom you represent.

MS. ERB: This is Nicole Erb with White & Case on behalf of Al-Rajhi Bank.

MS. KOWNACKI: Nicolle Kownacki, White & Case on behalf of Al-Rajhi Bank.

MR. SEQUEIRA: Reuben Sequeira for Al-Rajhi Bank.

MR. MAHAFFEY: Mike Mahaffey for Al-Rajhi Bank.

MR. AKROUK: Nwor Akrouk for Al-Rajhi Bank.

MR. RATTEY: Justin Rattey, Jones Day on behalf of the Dubai Islamic Bank.

MR. CARTER: Sean Carter from Cozen

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1 O'Connor along with my colleague, Scott Tarbutton.

2 We're here for the plaintiffs and the witness.

3 THE VIDEOGRAPHER: And on Zoom? Anyone?

4 Will the court reporter please swear in the
5 witness.

6 Whereupon,

7 JONATHAN M. WINER,

8 called as a witness, having been first duly sworn to
9 tell the truth, the whole truth, and nothing but the
10 truth, was examined and testified as follows:

11 MR. MAHAFFEY: Sean, can you hang on a
12 second? I think we do have some people on the line.

13 MR. CARTER: Yeah, we clearly do.

14 MR. MAHAFFEY: Yeah. And I'll say for our
15 client, Al-Rajhi Bank, we have Abdulrhman Almussaed
16 from the legal department.

17 MR. CARTER: If there's anyone else on the
18 line, please introduce yourself and make yourself
19 known.

20 THE VIDEOGRAPHER: Could the people on Zoom
21 identify yourselves?

22 MS. BEMBRY: Yes. This is Aisha Bembry
23 from Lewis Baach. Also on Zoom, my colleague, Jon
24 Gryskiewicz. We're from Lewis Baach and we represent
25 MWL, IIRO and certain charity officials.

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1 MR. GOETZ: Frederick Goetz for the World
2 Association of Muslim Youth or Assembly of Muslim
3 Youth.

4 MS. ERB: Okay. Witness has been sworn.

5 EXAMINATION BY MS. ERB

6 Q Good morning.

7 MS. ERB: Just one last housekeeping
8 matter. I expect that this deposition will elicit
9 confidential information of Al-Rajhi Bank and perhaps
10 its customers. Therefore, I provisionally designate
11 the deposition as confidential in accordance with the
12 NBL protective order and I would ask that if anybody is
13 on the line that is not subject to that protective
14 order if they could identify themselves. Okay. Good
15 morning.

16 MR. CARTER: Nicole, just -- for the record
17 just for classification, I think this is already
18 well-known, but we're reserving our right with regard
19 to the confidentiality designations.

20 MS. ERB: Thanks. That's fine.

21 BY MS. ERB:

22 Q Good morning.

23 A Good morning.

24 Q Can you please state your name for the
25 record?

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1 A My name is Jonathan M. Winer.

2 Q And, Mr. Winer, before we begin and get --
3 and begin discussing the subjects of our -- our -- the
4 topics today --

5 MS. ERB: Did somebody just join? Do we
6 need to identify --

7 MR. SHEPS: Yes. Robert -- Robert Sheps.

8 BY MS. ERB:

9 Q Okay. before we get started on the
10 substance of the deposition, I wanted to just be clear
11 on a few terms that I know we'll be using today and
12 just make sure that we understand those terms.

13 MS. ERB: Should we pause and address the
14 people who are joining? Who just joined?

15 PATRICK: I apologize. This is Patrick
16 with Esquire confirming that our exhibit tech is
17 connected. I see Baily is connected. I'll disconnect
18 at this point.

19 BAILY: Yes, sir. Thank you.

20 MR. CARTER: And while we're addressing
21 this, is there -- do we know why we're still getting an
22 alert when everyone joins? Is there any way to mute
23 that?

24 THE VIDEOGRAPHER: I was waiting for them
25 to make me host, so I could do that.

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1 Baily, can you mute the incoming sound?

2 BAILY: Currently Patrick is host. If he
3 gives it -- passes it over, I can turn that off for
4 you.

5 THE VIDEOGRAPHER: Thank you.

6 PATRICK: Okay. Baily is host. Thank you.
7 And I just removed the sound, so that should not occur
8 anymore.

9 THE VIDEOGRAPHER: Thank you very much. I
10 think we're good now.

11 MS. ERB: Okay. Thank you very much.

12 BY MS. ERB:

13 Q Mr. Winer, apologies. So before we get
14 started on the substance of our discussion today, I
15 just wanted to make sure we're on the same page when we
16 make references to certain terms, right? So we are
17 referring to charities today. When I refer to
18 charities, I am referring to the charities that you
19 discuss in your report, al-Heramain Islamic Foundation
20 or al-Heramain, IIRO, Muslim World League, the
21 International Islamic Relief Organization, IIRO, and
22 the World Assembly of Muslim Youth, WAMY.

23 And when I -- I might refer to those as the
24 charities, the subject charities, the relevant
25 charities. So when you hear me say charities, that's

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1 what I'm referring to unless I specify otherwise and if
2 we can agree on that terminology, I would appreciate
3 that. Is that fine for you?

4 A I understand that's the terminology that
5 you'll be using in your questions of me.

6 Q Thank you. And when I --

7 MS. BEMBRY: Counsel, this is -- counsel,
8 this is Aisha Bembry from Lewis Baach and we represent,
9 MWL and IIRO. I would just caution about using
10 charities generally to include all charities and not
11 specify. I mean, I'll make a specific objection, but I
12 have -- I do have a bit of concern about you indicating
13 that all charities -- that depends on the question.
14 I'll just make a preliminary objection to using the
15 term charities to include all charities without
16 specifying which charity you are referring to
17 specifically.

18 MS. ERB: That's no problem. Understood.

19 BY MS. ERB:

20 Q When I refer to the bank or Al-Rajhi
21 Bank -- when I refer to the bank, I'm referring to
22 Al-Rajhi Bank. So Al-Rajhi Bank is the defendant here
23 and I represent Al-Rajhi Bank, but I'm not going to say
24 Al-Rajhi Bank every time. Sometimes we'll see Al-Rajhi
25 Bank referred to Al-Rajhi Banking and Investment

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1 Corporation. I'm going to refer to Al-Rajhi Bank or
2 the bank. Unless I specify otherwise, that's the bank
3 I'm referring to. Is that fine for you?

4 A I understand.

5 Q Okay. And of course when I refer to 9/11,
6 I'm referring to the attacks of -- against the United
7 States on 9/11/2001, September 11th, 2001. So we may
8 have shorthand. I want to be clear that that's what
9 I'm referring to.

10 MR. GOETZ: For the record, WAMY joins Ms.
11 Bembry's objection as to lack of specificity using the
12 phrase charities.

13 BY MS. ERB:

14 Q If there's anything during the course of
15 the deposition that is unclear either with terminology
16 or a question, please let me know. I'm happy to
17 expand.

18 And I also want to get one other
19 housekeeping point which is in your -- in your expert
20 report, sir, are you aware that under rule 26 of the
21 federal rules of civil procedure an expert witness is
22 required to provide a complete statement of all
23 opinions the witness will express and the basis and
24 reasons for them?

25 A Yes.

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1 Q Okay. And I -- and you're comfortable that
2 your expert report satisfies the obligations on experts
3 under rule 26?

4 A Yes.

5 Q Very good. And you have a -- you have a
6 background in -- as a lawyer, so you would understand
7 those obligations fully?

8 MR. CARTER: Objection.

9 MS. BEMBRY: One other housekeeping matter,
10 counsel, if I may.

11 MS. ERB: Of course.

12 MS. BEMBRY: Again, this is Aisha Bembry on
13 behalf of MWL, IIRO and certain charity officials. I'd
14 just like to note for the record that expert discovery
15 with respect to the defendants that I represent, again,
16 MWL, IIRO and the charity officials, closed in 2021.
17 Mr. Winer did submit reports against those defendants
18 which reports have never been supplemented. The period
19 of expert discovery for my clients was fully litigated
20 and closed in 2021.

21 Accordingly MWL, IIRO and charity officials
22 reserve all rights with respect to the testimony
23 offered today by Mr. Winer and the testimony that is
24 the subject of his expert report being discussed today.
25 Thank you.

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1 BY MS. ERB:

2 Q If we can --

3 MR. GOETZ: Frederick Goetz on behalf of --
4 excuse me. Frederick Goetz on behalf of World Assembly
5 of Muslim Youth. We join in that position separately
6 as to WAMY.

7 MS. ERB: If we can please pull up tab 1,
8 which is Mr. Winer's expert report, and we will be
9 entering that as the first exhibit.

10 (Winer Exhibit JW1 was marked for purposes
11 of identification.)

12 BY MS. ERB:

13 Q So -- so, Mr. Winer, we have a physical
14 copy of your report which as a courtesy we're happy to
15 provide for you if you don't --

16 A Please.

17 Q Okay.

18 MR. CARTER: Counsel, what is the naming
19 structure we're using for today's exhibits?

20 MS. ERB: I'm looking at my -- JW1, so same
21 as yesterday.

22 MR. CARTER: Okay.

23 BY MS. ERB:

24 Q Mr. Winer, can you please confirm that
25 what's in front of you is a copy of your expert report

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1 dated October 4th, 2023?

2 A I'm looking through it right now in order
3 to ensure that it is.

4 MR. CARTER: There's -- there was at least
5 one instance of some highlighting. I don't know that
6 that's from the original report. There's another
7 instance of highlighting, another --

8 THE WITNESS: I don't recognize the
9 highlighting. So it looks like a report that's been
10 annotated by someone.

11 BY MS. ERB:

12 Q Okay. Well, do you have a separate -- your
13 own copy of the report that you would prefer to use?

14 A I have one, but it's not -- it doesn't
15 include my lectures, presentations and that material.

16 Q Okay. We can give you that.

17 A So I think it would be good to have this
18 version. This looks like the correct version, but
19 without the annotations.

20 Q Yeah, that's no problem. My team will take
21 care of that. This is a courtesy copy. We have got
22 the exhibit copy online, but --

23 A Okay.

24 Q Yeah. So we just wanted to -- I think it's
25 going to be easier for you today if you have a physical

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1 copy in front of you.

2 A I agree with you.

3 Q So do we want to go off the record while
4 we -- while we take care of this or -- okay. We can --
5 do you want to -- okay.

6 MR. CARTER: Let's go off the record just
7 for a second.

8 THE VIDEOGRAPHER: Off the record at 9:40.
9 (Deposition recessed at 9:40 a.m.)

10 (Deposition resumed at 9:55 a.m.)

11 THE VIDEOGRAPHER: We're back on the record
12 at 9:55.

13 BY MS. ERB:

14 Q Thank you, Mr. Winer.

15 I'd like to just turn to appendix one of
16 your report which I understand is at page 218 of the
17 PDF. And I just want to confirm, sir, that these are
18 the materials that you relied on or considered in
19 preparing your report in addition to those that are
20 cited in the report, correct?

21 A (Reviewing document.)

22 They should be.

23 Q If we could --

24 A I believe they are. Let's go to the next
25 page, please.

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1 Q These are the documents that are included
2 as appendix one of the report?

3 A Right. It looks right to me.

4 Q If we can turn to appendix 2 which I
5 understand is at page 228 of the PDF.

6 A That's right.

7 Q And this is a copy of your CV, correct?

8 A Yes.

9 Q And from your CV, I see that you've worked
10 extensively in both the public sector and in private
11 practice, correct?

12 A That's correct.

13 Q And when you were in the public sector, you
14 did not hold a position at the U.S. Department of the
15 Treasury; is that right?

16 A That's correct. I was at the State
17 Department.

18 Q And in your time in government, you did not
19 work as a bank regulator at any point, did you?

20 A My work was not as a bank regulator, that's
21 correct.

22 Q And when you were in private practice, you
23 did not work as a financial accountant; is that right?

24 A I was practicing law in private practice,
25 not accountancy.

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1 Q And you never sat for the CPA exam,
2 correct?

3 A I'm not a CPA.

4 Q And you were never employed by a bank; is
5 that correct?

6 A I represented banks, provided advice and
7 counsel to banks, a number of banks and clients at
8 different times.

9 Q But you were never employed at a bank? You
10 were never an employee at a bank?

11 A I was not a bank employee, that's correct.

12 Q And you would not consider yourself a
13 banker?

14 A I'm not a banker.

15 Q In your report, you state that you relied
16 on many different types of material in preparation of
17 your report, correct?

18 A Yes.

19 Q And among the materials that you rely
20 heavily on in your report are CIA reports, correct?

21 MR. CARTER: Objection to form.

22 THE WITNESS: I included CIA reports as
23 among the materials that I relied on, that's correct.

24 BY MS. ERB:

25 Q And would you agree that CIA reports

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1 generally do not reveal their sources, correct?

2 A In the report, I provide an extended
3 discussion of the construction of CIA reports and their
4 uses. And I state that they're evidence based and they
5 also intentionally for when they're released to the
6 public do not include sources. When they're released
7 to people inside the government, the sourcing is
8 provided. And I've read many CIA reports in which the
9 sourcing has been provided and I'm familiar with the
10 structure of CIA reports and the extent to which they
11 provide sourcing.

12 The sourcing typically is still somewhat
13 anonymized. So it will refer to whether it is a
14 documentary source typically or a human source. If
15 it's a human source, it may indicate the degree to
16 which the source is reliable. There are a variety of
17 formulations that the CIA uses in discussing sources,
18 but they don't reveal the individual particular source
19 when it's a human source.

20 Q And when -- when CIA reports are made
21 available to the public or declassified, the sources
22 are often redacted, correct?

23 A Yes.

24 Q And in your report, you identify some
25 redactions in the CIA reports that you cite and rely

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1 on, correct?

2 A I did.

3 Q And you acknowledge that these redactions
4 were in part to protect the report sources and methods?

5 A That's correct.

6 Q And when you were preparing your report,
7 did you ever try to determine the sources of the
8 intelligence in the CIA reports that you rely on?

9 A No.

10 Q And while you were working at the
11 Department of State from 1994 to 1999, I believe, did
12 you receive copies -- in your official capacity, did
13 you receive copies of any of the CIA reports you rely
14 on in your expert report?

15 A Not to my recollection, no. Most of them
16 were post the time that I was there.

17 Q And in addition to unknown sources,
18 sometimes the sources used to gather intelligence are
19 otherwise unreliable, correct?

20 A That's an incomplete statement. So it's
21 not completely correct.

22 (Winer Exhibit JW2 was marked for purposes
23 of identification.)

24 Q Okay. Let's -- let's bring up if we can
25 tab 30. And, Mr. Winer, just for your ease of

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1 reference, I see that they've brought you a physical
2 copy. And for your reference, this tab 30 is a CIA
3 report from August 2002 and is cited at paragraph 2.93
4 of your report which is on page 20, I believe.

5 Have you seen this document before?

6 A My report?

7 Q No. Tab 30, the CIA report from
8 August 2002.

9 A Yes.

10 Q Okay. And on page 2 of the CIA report
11 which is at CIA 00307, the report says, quote, most
12 detainees are employing counter interrogation
13 techniques and appear to be hiding detailed financial
14 information. Do you see that?

15 A Yes.

16 Q And on page 3 of the report at 00308, the
17 report states detainees have provided information on
18 Al-Qaeda linked donors, fund raisers and facilitators,
19 although the information is incomplete and some almost
20 certainly is false. Do you see that?

21 A No, I don't actually. Where, please?

22 MR. CARTER: The tech did not change the
23 page on the screen.

24 MS. ERB: Okay. So for the technician, it
25 is 00307 and it should be on the next page. And that's

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1 the first quote I was referring to. It's at the -- I'm
2 sorry. It's the second quote I'm referring to. It
3 should be in the -- under the heading donors, fund
4 raisers and facilitators on the right-hand column.

5 THE WITNESS: Yes. I read that.

6 BY MS. ERB:

7 Q Okay. And I take it you would agree that
8 any data points provided by these sources in this CIA
9 report would not be reliable absent corroboration,
10 correct?

11 A It depends. You have to look at the total
12 context of any particular source and the CIA routinely
13 does that. So when you see a full CIA report, the full
14 report will provide you whether it's an established
15 source, whether it's a reliable source or source whose
16 reporting has previously been found to be reliable.
17 They'll provide context.

18 So the context provided here says that the
19 detainees which are a particular type of source in a
20 particular setting -- I assume from this this is
21 Guantanamo. I'd have to go back and look at the
22 document to be clear on that. It refers to captured
23 and arrested Al-Qaeda operatives. So they're under
24 custody, have provided information on donors, fund
25 raisers, facilitators. Some is incomplete and some

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1 almost certainly is false.

2 So there you go to appendices A, B and C
3 for more details and look at the sourcing there. So it
4 depends very much on the context and the other
5 information that the CIA has available to it as to how
6 they weigh it and what they weight.

7 Q And did you take any steps to corroborate
8 the statements in this report before you included it in
9 your expert report?

10 A Yes.

11 Q Can you tell us what you did to corroborate
12 these statements?

13 A Yes. What I did was I looked at the CIA
14 reports and I looked at ARB's own documents and all the
15 other information available to me. And I weighed the
16 various elements of the evidence and looked to see
17 whether some of the -- whether the statements that I
18 was looking at from the CIA received any corroboration
19 from the documents provided in the discovery.

20 And I found various types of documents in
21 the discovery some of which were other reports from
22 other government agencies, some of which were reports
23 from other governments, some of which were in
24 designation materials, some of which were in ARB's own
25 documents, some of which were in the navsi luke (ph)

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1 documents, some of which were in discovery provided by
2 others in connection with the litigation and looked at
3 that all together.

4 So I tried to do an all source analysis
5 rather than merely relying on a sentence or two
6 sentences or three sentence from any particular report.
7 The reason why my report goes on at the length that it
8 does is I was seeking to put down as many data points
9 as possible on which I based my opinions.

10 Q In footnote 35 on page 20 of your report,
11 you cite the CIA report we've been just discussing, but
12 I don't see that you have flagged for the Court or the
13 reader of your expert report the concerns raised in the
14 CIA report itself about the incomplete and almost
15 certainly false data points that were included; is that
16 correct?

17 A It's correct that I did not include every
18 sentence from every CIA report and for every government
19 report that I read in my already 200-page report.

20 Q Excuse me, Mr. Winer. That's not -- that
21 was not the question.

22 A I'm sorry. It is the question.

23 Q The question I had was: Did you identify
24 in your footnote for the Court that information in the
25 2002 CIA report you cited according to the CIA was

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1 incomplete and some almost certainly false?

2 MR. CARTER: Do you mean aside from
3 footnoting the report itself?

4 MS. ERB: Yes. Is he expecting that the
5 Court is going to go through each of the CIA reports
6 and determine which information the CIA itself is
7 calling almost certainly false and incomplete?

8 THE WITNESS: Pardon me, ma'am. I think
9 you're mischaracterizing my work and I think you're
10 mischaracterizing the report itself. You have to look
11 at the totality of the report and pulling out one
12 footnote from the report does not look at the totality
13 of the report. I'm happy to go through the totality of
14 that report with you, but to cherrypick a particular
15 footnote which imposes a standard kind of limitation
16 that the CIA puts on material when it's evaluating
17 material is I think incorrect and wrong and a
18 misapplication of how one goes about looking at U.S.
19 government's intelligence reports. I just think it's
20 not correct.

21 BY MS. ERB:

22 Q If you can turn, sir, to section 6.82 of
23 your report which is at page 54. And if you could look
24 at the last sentence of 6.82 where you say finished
25 intelligence is then distributed to the government

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1 consumers when they ask questions about it, seek
2 further information or analysis, raise queries about
3 the particular sourcing that went into the document
4 and/or use the finished intelligence as a foundation
5 for policy decisions. Do you see that sentence?

6 A Yes, ma'am.

7 Q Okay. And would you agree that where
8 statements in CIA reports are not corroborated for
9 this -- by this type of questioning by government
10 consumers or others that those uncorroborated
11 statements are less reliable than the corroborated
12 statements?

13 A There are a number of assumptions that
14 you've put into that sentence which makes it a very
15 complicated sentence. You have to look at the material
16 in the CIA report and evaluate it against all other
17 information known to you. Certainly the only process
18 for evaluating a CIA report is not a process of
19 government consumers asking questions about it.

20 I have reviewed probably certainly hundreds
21 and probably thousands of CIA reports in the many years
22 in which I held a clearance. And the reports that I
23 read and absorbed and had no reason to question, the
24 reports that I read and absorbed had lots of questions
25 about who provided further taskings. Both can be true

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1 and this can be true in a situation even when a report
2 is -- lists that some of the information in the report
3 sourcing is of uncertain -- uncertain completeness or
4 may involve a source which could not be completely
5 trusted.

6 You have to then look and see whether other
7 material in the report in turn provides further
8 corroboration, whether this other information outside
9 the report that provides corroboration and you would
10 talk to the analyst about it if you had those
11 questions. So it very much depends on what's in the
12 entire report and the context.

13 Q Would you agree that an uncorroborated data
14 point is less reliable than a corroborated data point?

15 MR. CARTER: Objection to form.

16 THE WITNESS: I would want to know whether
17 a data point was corroborated or not and by what.

18 BY MS. ERB:

19 Q Sir, if you can turn to section 7.3.14 on
20 page 90 of your report.

21 A What's the section again, please?

22 Q 7.3.14 on page 90.

23 A Yes.

24 Q So there you refer to you say SAAR,
25 S-A-A-R, personally was one of the 128 members of IIRO

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1 prior to 9/11, correct?

2 A Yes.

3 Q Okay. And before we go into discussing
4 this particular data point, I just want to get clear on
5 use of terminology here. So you use SAAR to refer to
6 an individual Sulaiman Abdulaziz Al-Rajhi, correct?

7 A Yes.

8 Q And you also define the Sulaiman Abdulaziz
9 Al-Rajhi Charitable Foundation as SAAR Foundation,
10 S-A-A-R Foundation, correct?

11 A No.

12 Q Not in this particular paragraph. If
13 you -- I'm talking -- I'm backing away now just to get
14 terminology because this paragraph uses the term SAAR.
15 So I want to be clear on how you're using SAAR
16 throughout your report. So for an example, if you want
17 to look at 1.2.7 of your report, you'll see use of the
18 word SAAR Foundation which I understand there you're
19 referring to the Sulaiman Abdulaziz Al-Rajhi Charitable
20 Foundation.

21 A No.

22 Q Let's go to 1.2.7 of your report. This is
23 on page 3.

24 A That was a question that I was asked and
25 the definition given to me. But the reason why I say

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1 no there is because the charitable foundation as I
2 discuss elsewhere in the report was not created in a
3 formal sense until 2000 -- until 2000 and yet it
4 carried out transactions before it existed, before it
5 actually had a certification and was according to
6 corporate documents founded. So --

7 Q So let me just -- let me just interrupt you
8 for a second because are you referring now to the SAAR
9 Foundation in Virginia or the SAAR Found -- the
10 Al-Rajhi Charitable Foundation in Saudi Arabia?

11 A It's a complex question unfortunately
12 because of the complex facts. I'm happy to answer the
13 com -- provide you the context in which I'm using it
14 which is not a simple definition unfortunately for
15 reasons that are not my fault, but inherent in how the
16 charity operated.

17 Q Which charity, sir?

18 A The SAAR Foundation.

19 Q In which country, sir?

20 A In both the United States and Saudi Arabia.

21 Q Are you aware that they are separate
22 entities?

23 A I think that's an interesting and
24 complicated question.

25 Q Can you turn to section 9.57.1 of your

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1 report and that is on page 162 of your report? In that
2 paragraph, sir, you cite to a website relating to the
3 SAAR Charitable Foundation in Saudi Arabia, but you
4 characterize it as -- in a reference to the SAAR
5 Foundation in the United States; do you not?

6 MR. CARTER: Objection.

7 THE WITNESS: I don't understand the
8 question.

9 BY MS. ERB:

10 Q So let's look at this paragraph. A
11 statement by entities associated with and under the
12 apparent control of the Al-Rajhi family not provided in
13 discovery but available online shows that the SAAR
14 Foundation did not come into existence until mid 2000.
15 The online statement is set forth in the website
16 maintained by the Sulaiman Al-Rajhi Holding Company
17 regarding the Sulaiman Al-Rajhi Charitable Foundation
18 and states the following regarding the SAAR Foundation.
19 It was founded through a joint committee, et cetera, et
20 cetera, and then at the end, the philanthropic
21 institution turned to Sulaiman Abdulaziz Al-Rajhi
22 Charitable Foundation.

23 Now, when you go to the website, it's very
24 clear that this is referring to the charitable
25 foundation formed in Saudi Arabia, but when you're

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1 referring to SAAR Foundation here, my understanding is
2 you're referring to the SAAR Foundation in the United
3 States?

4 MR. CARTER: Objection, misstates the
5 report.

6 THE WITNESS: Again, it's a complicated
7 answer. It's not a simple answer because the practices
8 weren't simple. The SAAR Foundation, whatever the SAAR
9 Foundation was structurally as near as I can tell, it
10 may have been a committee prior to 2000 in Saudi Arabia
11 is interacting with the SAAR Foundation in the United
12 States and directing it to make payments as if it were
13 being made by the SAAR Foundation in the United States
14 which in turn is owned by or held by after a certain
15 point an entity called Humana, I believe, in the Isle
16 of Man which in turn is getting instruction from or
17 relating to the activities of the SAAR Foundation
18 committee in Saudi Arabia from an entity that doesn't
19 exist at that time, but which is using ARB. So it's
20 very difficult to differentiate between these entities
21 given the sequence of the structuring of the entities.

22 BY MS. ERB:

23 Q When you're referring to the SAAR
24 Foundation in your report then, is it fair to say that
25 you're referring to one or the other or both without

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1 distinction?

2 A No. I'm trying to refer to them in the
3 ways in which they functioned at particular times given
4 the changing legal status and the changing activities
5 of these foundations over time. The SAAR Foundation in
6 the United States phased out more or less at exactly
7 the same time that the SAAR Foundation which previously
8 as near as I can tell didn't exist legally was being
9 given legal existence in Saudi Arabia.

10 So I think that it's difficult to give a
11 lot of credence given the common management in the
12 organization of these entities to the differentiation.
13 And it would be not appropriate to fully differentiate
14 their activities because they're all mixed together as
15 is set forth in some detail, for example, in the
16 affidavit of David Kim that was filed in the SAAR
17 investigation in the -- criminal investigation in the
18 United States association -- associated with operation
19 of Green Quest.

20 Q So for purposes of your report, the acronym
21 SAAR you're using to refer to the individual SAAR
22 Foundation, you're using it sounds like as a reference
23 to one or the other of the charitable foundations
24 depending on the context. Don't you agree that for
25 purposes of the Court reviewing portions of your report

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1 that the conflation of SAAR, SAAR Foundation when
2 you -- when there are different entities involved in an
3 individual is incredibly confusing if not misleading?

4 MR. CARTER: Objection to form.

5 THE WITNESS: I believe that the extent
6 that it is confusing or misleading is the result of the
7 activities of the people involved in the SAAR
8 Foundation and the -- and in SAAR's charitable
9 activities, not misleading by the expert who's trying
10 to look at the materials in front of them as evidence
11 and organize it and make sense of it.

12 BY MS. ERB:

13 Q Sir --

14 A So to the extent that it is misleading or
15 confusing, that's inherent in the actions undertaken by
16 the founder or co-founder of ARB and the head of the
17 SAAR Charitable Committee Foundation in Saudi Arabia,
18 foundation in the United States, the person who put it
19 all together and those assisting him, not the expert
20 who is trying to organize it, understand it and
21 communicate it.

22 Q Sir, you agree that you chose the acronym
23 SAAR to refer to the individual, correct, for purposes
24 of your report?

25 A He's referred to that in a variety of

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1 places.

2 Q I think the SAAR Foundation is referred to
3 in a variety of places. I'm not sure that the
4 individual himself when parties are referring to the
5 individual that he's referred to as SAAR. That is an
6 acronym that you adopted for purposes of your report,
7 correct?

8 A It's an acronym that I used within my
9 report, that's correct.

10 Q Okay. For purposes of this deposition when
11 I am referring to the individual and I would ask when
12 you're referring to the individual if we can refer to
13 Sulaiman Al-Rajhi shorthand. Do you agree with that?

14 A We'll see on the context. I can't agree
15 across the board. I don't think it's appropriate.

16 Q If we can turn back now to the paragraph we
17 were looking at before which was 7.3.14 on page 90 of
18 your report. And this is again 7.3.14. There's a
19 reference to Sulaiman Al-Rajhi personally being one of
20 the 128 permanent members of IIRO prior to 9/11,
21 correct?

22 A Correct.

23 Q And if we can look now at section .11.4 on
24 page 70 of your report. Here you cite a February 2002
25 CIA report. Do you see that?

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1 A I don't know which paragraph you're
2 referring to.

3 Q 6.11.4 --

4 A Okay.

5 Q -- on page 70 --

6 A Yes.

7 Q -- of your report. And it begins the
8 February 27th, 2002, CIA report. Do you see that?

9 A Yes.

10 Q And this report is called identifying
11 Al-Qaeda donors and fund raisers?

12 A Yes.

13 Q In this paragraph, you point out that in
14 the key find -- in the key finding in this report, the
15 intelligence reporting is described as fragmentary and
16 mostly anecdotal and old. Do you see that?

17 A Yes.

18 Q A bit further down in your report at
19 6.11.4.5 at page 71 -- do you see that?

20 A Yes.

21 Q You quote the report as stating that as of
22 2000, Sulaiman Al-Rajhi was also one of the 128
23 permanent members of IIRO, correct?

24 A Yes.

25 Q And as it happens, this CIA intelligence on

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1 Sulaiman Al-Rajhi, this particular data point is not
2 reliable, correct?

3 MR. CARTER: Objection.

4 THE WITNESS: It's incomplete.

5 BY MS. ERB:

6 Q Well, if you can look at your footnote 191
7 at page 71. Just take a minute and read that footnote.

8 A Yes, I remember the foot -- I remember the
9 footnote.

10 Q Okay.

11 A I remember the documents.

12 Q And you reviewed those documents?

13 A Yes.

14 Q Okay. And for the record, we're describing
15 the documents produced by Al-Rajhi Bank and the way you
16 say it in your footnote documented efforts by Sulaiman
17 Al-Rajhi to resign from his position, this position
18 being the position at IIRO, due to his having
19 insufficient time to devote to it.

20 A Yes.

21 Q And in this footnote, you say that you
22 therefore don't rely on this data point from the CIA
23 profile of the Al-Rajhi family's involvement with IIRO,
24 correct?

25 A That's correct.

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1 Q But you say you include the statement in
2 the report for the sake of completeness, correct?

3 A Yes.

4 Q In your footnote and by your own statement,
5 you say that the CIA was unaware of the fact that
6 Mr. Al-Rajhi, that Sulaiman Al-Rajhi had resigned from
7 the IIRO, correct? This is further down in footnote
8 191.

9 A I don't think that's an accurate
10 characterization of what I said.

11 Q Okay. Well, you say it's a fact apparently
12 not known to the CIA.

13 A (Reviewing document.)
14 I do say that.

15 Q Can you explain, sir, why you include
16 this -- what the CIA is calling fragmentary, anecdotal
17 and old intelligence in your expert report especially
18 when you're aware that data points in that report have
19 been shown to be unreliable?

20 MR. CARTER: Objection.

21 THE WITNESS: Sure. I'm trying to as much
22 as I can take all the evidence available to me and
23 provide an accurate summary of all of the evidence and
24 make findings based on my conclusions based on all of
25 the information. And so I'm trying to include things

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1 regardless of what the -- what the implications might
2 be that I find to be overall correct assessment or
3 analysis of the information. Now, I didn't --

4 BY MS. ERB:

5 Q Here --

6 A Please don't interrupt me. I'm not done.
7 Thank you.

8 In this particular case, my understanding
9 is that Sulaiman Al-Rajhi who I refer to as SAAR here
10 was affiliated with or owned, a shareholder in a
11 related entity which is Sanabel which is providing
12 funding to IIRO which raised the question for me and
13 still does raise the question for me whether the
14 meetings were unnecessary for him to attend, not worth
15 his time because he already had other windows or
16 insight into IIRO. This, in fact, is not contained in
17 the CIA reporting. I didn't get to that fact in this
18 footnote, but it's relevant to my thinking overall.

19 Q So in this particular CIA report, the CIA
20 references that the intelligence is fragmenty and --
21 fragmentary, anecdotal and old. And you, yourself,
22 acknowledge in your report that the data point relating
23 to Sulaiman Al-Rajhi and the IIRO board membership is
24 unreliable. And you did not rely on it for purposes of
25 your report?

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1 A Excuse me. That's not the same thing.
2 It's not to say it's unreliable. It's saying there's
3 additional context and that I didn't rely on it because
4 they did not have the additional context in the
5 unclassified version of the report. It's different
6 between a statement to say something is not relied on
7 from saying something is unreliable. This is not the
8 same thing.

9 Q So my question is: When looking -- looking
10 at the entire report here which is where the CIA is
11 calling the evidence or the data points -- excuse me --
12 fragmentary, anecdotal and old and you have confirmed
13 that, in fact, there's a fact in this report that is
14 unreliable for purposes of your report?

15 A That's a mis -- ma'am, that's a
16 mischaracterization of what I just said.

17 Q Okay. The data point that you are not
18 crediting in your report. You say as much in your --
19 in your footnote?

20 A I'm saying that I did not rely on it. I'm
21 not saying --

22 Q Right.

23 A I'm not saying that I was unaware of it or
24 that it is unreliable.

25 Q I didn't say that either.

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1 A You said that I found that it was
2 unreliable and that is not accurate.

3 Q Okay. You did not rely on it. My question
4 is: Why did you include this report? Are you
5 expecting the Court to go through data point by data
6 point of this fragmentary, anecdotal and old
7 information when you've confirmed that a fact in this
8 report has not -- is something you are choosing not to
9 rely on? What are you expecting the Court to do with
10 this 2002 CIA report?

11 MR. CARTER: Objection to form.

12 THE WITNESS: It's really up to the Court
13 to decide how to handle each expert and each expert
14 report, and that's not for me to judge. What's for me
15 to do is to provide as complete an account as I can the
16 basis for which I'm finding -- making my opinions and
17 to cite that. And here I believe I would be criticized
18 if I failed to include this information, criticized if
19 I do include the information. It's kind of a no win
20 the way in which you're framing it.

21 Why are these -- why is this information
22 about fragmentary nature and old in this report? It's
23 because I'm providing the Court as well as opposing
24 counsel as accurate and complete information as I can,
25 but what are the information on which I based my

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1 opinions. That was my goal. That's why this report is
2 the length that it is. And it's a very lengthy report.
3 It took me a lot of time to do. I had to review a
4 tremendous amount of material.

5 So that's what was in my head. That's what
6 I'm trying to do. And how the -- how the Court chooses
7 to deal with it is really going to be up to the Court
8 and the lawyers and the rulings there. I'm not
9 involved in that.

10 BY MS. ERB:

11 Q Sir, you used the term evidence over 200
12 times in your report. When you're using the term
13 evidence, are you including the data points from CIA
14 reports that you rely on and cite in your report?

15 A Yes, when they're evidence based which most
16 of them are.

17 Q Would you consider the data point we just
18 discussed relating to Sulaiman Al-Rajhi's membership on
19 the board of IIRO evidence?

20 A Yes. He was a member of the board.

21 Q In 2000?

22 A He resigned, but they were continuing to
23 send him things. So he was still a member as far as
24 they were concerned and that was for him and them to
25 work out. You want the entire context which you are

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1 provided the entire context.

2 Q Do you agree that --

3 A Not quite the entire context because I
4 didn't get into the Sanabel business because that
5 wasn't in the CIA report. So that seemed to me to be
6 outside the scope of that particular data point as I
7 was writing the report. I'm happy to supplement if
8 that would be helpful.

9 Q Sir, do you -- do you agree that CIA
10 reports use caveats?

11 A Yes.

12 Q And you agree that when a CIA report uses
13 caveated language, it means that the CIA lacks
14 sufficient information to provide a conclusive
15 statement on a particular data point?

16 A It depends on what the caveat is. It's
17 contextual. It may mean that. It could mean other
18 things.

19 Q Do you agree that when caveats are used,
20 the data points being referred to are less reliable?

21 MR. CARTER: Objection.

22 THE WITNESS: It depends on the context. I
23 can't make a general statement about it. I'd have to
24 look at a particular statement, the particular caveat
25 and evaluate it in the context of the entire report,

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1 the date, subsequent reports, a variety of other
2 things. It's all contextual.

3 BY MS. ERB:

4 Q Can you turn to paragraph 6.8.3 of your
5 report where you actually discuss caveats in CIA
6 reports? There you cite examples of caveats. For
7 example, possible would be a caveat, apparently or
8 probably?

9 A Yes.

10 Q Would you agree that may or may have would
11 also be a type of a caveat if used in a CIA report?

12 A Yes.

13 Q And would it surprise you to learn that in
14 the CIA reports you cite, the CIA uses caveated
15 language at least 230 times?

16 A I didn't count it, but that's normal.

17 Q And are you aware that some of the caveats
18 in the CIA reports you cite concern Al-Rajhi Bank and
19 members of the Al-Rajhi family?

20 A Yes. I believe I cite some.

21 Q Let's turn to 6.10.3.11 which is page --
22 excuse me -- 66 of your report. Did you find that
23 paragraph?

24 A Yes.

25 Q It's referring to a CIA report from 1997.

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1 Do you see that?

2 A Right.

3 Q And about two-thirds of the way down of the
4 paragraph on page 66, I recognize it continues on the
5 next page, but just on this page about two-thirds of
6 the way down, fourth line from the bottom, it says
7 Al-Rajhi financial times to Islamists is inconclusive.
8 Do you see that?

9 A Yes.

10 Q And when you say that is inconclusive, that
11 is a type of caveat or characterization of a data point
12 that is less reliable or not fully reliable shall we
13 say, right, inconclusive?

14 MR. CARTER: Objection.

15 THE WITNESS: I don't agree with your
16 characterization on reliability. Let me explain if I
17 may respond. This is as of November 20, 1997. It's
18 facts that were available to the agency. That is how
19 it's characterized. In my memory of this report is
20 that the report itself is undated. It refers to that
21 as the information available to the CIA for the purpose
22 of this report as of that time.

23 It then says in the end following again a
24 large redacted section I can't evaluate because it's
25 two-and-a-half inches of redacted materials, Al-Rajhi

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1 financial ties to Islamists is inconclusive. It
2 doesn't say the information that they have is
3 unreliable. It's making a qualitative evaluation that
4 the totality of the information is insufficient at that
5 point for them to reach a conclusion.

6 It doesn't say we have information, lots
7 and lots of information, hundreds of pages, thousands
8 of pages, 2,000 sources, two sources, one source, one
9 data point. It doesn't say any of that. What it says
10 is that as of this time, their evaluation is that it's
11 inconclusive. So it's not about the reliability of the
12 information.

13 It may be about reliability. That's
14 possible, although it doesn't say that. It could be
15 about the quantity of the information, the amount or
16 number of sourcing on the information. It's a variety
17 of things as of that time.

18 BY MS. ERB:

19 Q But it would not be -- it would not be safe
20 to conclude that Al-Rajhi -- that there were financial
21 ties, that Al-Rajhi had financial ties to Islamists
22 based on all of that. Based on where the CIA came out
23 at the time was that those ties, Al-Rajhi financial
24 ties to Islamists is inconclusive, correct?

25 MR. CARTER: Objection.

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1 THE WITNESS: As of the time of
2 November 20th, 1997, the information available to the
3 CIA that they used in preparing this finished
4 intelligence report was insufficient to allow them to
5 conclude that Al-Rajhi had financial ties to Islamists.

6 BY MS. ERB:

7 Q Can you look at footnote 170 of your
8 report?

9 A Yes.

10 Q Here in this footnote, you note that this
11 particular CIA report is carefully -- has -- contains
12 carefully caveated assessments. Do you see that?

13 A Yes.

14 Q Okay. And further in your footnote here,
15 you say later as described further in this expert
16 report, the CIA concluded that, quote, senior Al-Rajhi
17 family members have long supported Islamic extremists
18 and probably know that terrorists use their bank. Do
19 you see that?

20 A Yes.

21 Q Okay. Again, the word probably is another
22 caveat, correct?

23 A Yes. It means more likely than not.

24 Q And this later statement that you're
25 quoting comes from a 2003 CIA report?

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1 A Yes. May 2003, I believe.

2 Q So from 1997 to 2003 and all the
3 investigations that occurred in between, the CIA is
4 still using a caveat when referencing Al-Ra -- the
5 Al-Rajhi family's knowledge of or ties to Islamists and
6 knowledge of whether terrorists are using the bank,
7 correct?

8 MR. CARTER: Objection to form.

9 THE WITNESS: No, I don't think that's
10 correct. I think that that goes beyond what's stated
11 in my footnote. What's stated in my footnotes is that
12 later on in this 2003 report, the CIA concluded senior
13 Al-Rajhi family members have long supported Islamic
14 extremists. The first sentence is not caveated.
15 Senior Al-Rajhi family members have long supported
16 Islamic extremists. That's not caveated at all. And
17 then it says and probably know that terrorists use
18 their banks which is more likely than not.

19 It then says Sulaiman and several Al-Rajhis
20 have given money to suspicious organizations and
21 organization -- individuals and organizations worldwide
22 moreover. Sulaiman's tight control of Arabic which I
23 believe is a reference to Al-Rajhi Bank activities
24 suggests he is willing that his bank is attractive to
25 extremists. So that's the conclusion that they reach

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1 in May of 2003.

2 BY MS. ERB:

3 Q So in use of the word probably know that
4 terrorists use their bank, you agree that is a caveat
5 that is used in 2003 following -- coming six years
6 later from the 1997 CIA report, right?

7 A I read the sentence as I just did.

8 Q Okay.

9 A And what it is is it's a statement of not
10 with absolute doubt, not beyond all reasonable doubt.
11 It's more likely than not. That's what prob -- the
12 word probably means. It means more likely than not.
13 It doesn't mean beyond all reasonable doubt, the
14 standard in a criminal case.

15 Q And when see references to Islamists or
16 extremists, are you equating those terms with
17 terrorists?

18 A You have to look at the context in which
19 the words are being used. It depends. I look at the
20 total context of a particular report or a particular
21 document and try to assess its meaning because it's not
22 always used in the same way. It depends.

23 Q And do you -- do you think that the term
24 Islamists in 1997 was referring to terrorists?

25 A We'd have to go back and look at the

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1 context of that report in order to be able to assess it
2 in its context. I'm not prepared to make a generic
3 statement about it.

4 Q And when you see that in the same report
5 they say that the senior Al-Rajhi family members
6 probably know that terrorists use their bank, but then
7 later they say that suggest -- in the sentence you were
8 reading at the end that Sulaiman suggest -- tight
9 control of the bank's activities suggest he is saying
10 that his bank is attractive to extremists, do you view
11 extremist to mean terrorists there?

12 A Probably, but I -- again, we would have to
13 go through that report for me to assess that word
14 difference with consideration. I don't recollect in my
15 report getting into the distinctions between Islamists,
16 extremists and terrorists in a definitive way and
17 analyzing U.S. government reports. And so we'd have to
18 go look at the underlying documents and assess them
19 line-by-line.

20 Q Sir, in your report, you say that Osama bin
21 Laden held accounts at Al-Rajhi Bank, correct?

22 A I do and I believe that's accurate.

23 Q And you suggest that or you state that
24 Al-Rajhi Bank was the bank that bin Laden, quote, had
25 personally chosen to open his own account in 1991; is

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1 that correct?

2 A Yes.

3 Q Did you review the statements of account
4 for the bin Laden account that were produced?

5 A Yes. I reviewed the information that was
6 available to me.

7 Q Okay. And --

8 A It wasn't complete to the best of my
9 knowledge. It was partial. It was a few pages of
10 documents. So I don't know what else the bank may or
11 may not have on that. I just don't know.

12 Q If we can turn to tab 20. This should be
13 coming up on your screen. Let's see when it's coming
14 up.

15 MR. CARTER: I'm sorry. Are we marking
16 this as JW3?

17 MS. ERB: Yes. We are.

18 (Winer Exhibit JW3 was marked for purposes
19 of identification.)

20 BY MS. ERB:

21 Q If we could turn to ARB-843 in the lower
22 hand corner. And do you have an English -- can you go
23 to PDF page 4? There. Okay.

24 Can you see that, sir?

25 A Yes.

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1 Q Do you recall reviewing this document in
2 connection with the preparation of your expert report?

3 A Not specifically. If it's cited in my
4 report, then I did.

5 Q This is an account statement for Osama bin
6 Laden with the account last four digits 9054?

7 A Right.

8 Q And this account statement covers all
9 activity in the account from 19 -- January 1998 through
10 December 2002 which is the relevant period for purposes
11 of this litigation. Do you see that in the upper left,
12 the date range?

13 MR. CARTER: Objection to form.

14 THE WITNESS: I see the date range. My
15 understanding is that the relevant period you've just
16 raised goes to what was allowed for discovery.
17 Certainly my report is based on events necessarily and
18 activities that predate the period of discovery.

19 BY MS. ERB:

20 Q And do you see that this account statement
21 shows no activity during that time period 1998 to 2002?

22 A I wouldn't expect it to. Yes, it shows no
23 activity and I wouldn't expect to it.

24 Q And you see no withdrawals or deposits,
25 correct?

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1 A Of course not.

2 Q Why do you say of course not?

3 A Because bin Laden's accounts had been
4 frozen at some time earlier. The Saudi government had
5 basically shut down his direct ability to move money in
6 his own name is my understanding.

7 Q And so --

8 A He was a notorious terrorist at that point.
9 Absolutely notorious already.

10 Q So from 1998 to 2002, you are not surprised
11 that there is no activity by Osama bin Laden through
12 his accounts at Al-Rajhi Bank, correct?

13 A At any bank in the world. At any bank in
14 the world.

15 Q So if I was to show you the other Osama bin
16 Laden accounts that were held at Al-Rajhi Bank and they
17 similarly reflect zero activity during this period,
18 that would not surprise you?

19 A No.

20 Q Then I will spare you a review of each and
21 every one of those documents, but I represent to you
22 that each and every one shows zero activity in his
23 accounts and it sounds like you would agree that that
24 is as it should be?

25 A It would be astonishing to me if any bank

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1 in the world show transactions with Osama bin Laden in
2 this -- in that period.

3 Q Your report also discusses the charities,
4 the IIRO, al-Heramain Muslim World League and WAMY
5 charities at some length, correct?

6 A The report speaks for itself on that, but,
7 yes, they're referenced.

8 Q And these -- these particular charities are
9 headquartered in Saudi Arabia, correct?

10 A Yes.

11 Q And they have -- some of them have branches
12 outside of Saudi Arabia, correct?

13 A Yes.

14 Q None of these charities listed, IIRO,
15 al-Heramain Muslim World League and WAMY, were
16 designated by the United States or the United Nations
17 before 9/11, correct?

18 A Charities generally were not designated
19 prior to 9/11. I would have to think whether I'm aware
20 of any charity anywhere being designated prior to 9/11.
21 I can't recollect any at this time.

22 Q When you were preparing your report, did
23 you review account statements produced by the bank for
24 certain of these charities?

25 A I did. They're referenced in my report.

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1 Q And do you recall that none of the bank
2 statements you reviewed or that the bank produced were
3 for any non-Saudi branches of these charities, correct?

4 A That's an incomplete statement and I think
5 is not -- it's more complicated than that unfortunately
6 because the al-Hermain documents which are the ones I
7 looked at at greatest length in particular show that
8 monies being provided to al-Hermain and for
9 al-Hermain for particular accounts with different
10 geographic areas to go to those geographic areas. And
11 so ARB is facilitating activity to -- through those
12 activities outside the kingdom of Saudi Arabia. And
13 the mechanics of that are not visible in the bank
14 documents that I reviewed.

15 Q My question, sir, is whether you recall
16 seeing any account statement to suggest that any
17 charity branch outside of Saudi Arabia held an account
18 at Al-Rajhi Bank?

19 A You can't tell from the documents provided
20 what the char -- which elements of the charities were
21 doing what.

22 Q That's not my question, sir. Let me try
23 the question again.

24 A Sure.

25 Q Do you recall seeing any account statement

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1 in the name of a charity branch located outside Saudi
2 Arabia?

3 A No.

4 Q Are you aware, sir, that none of the
5 branches of the charities that I've listed were
6 designated before 9/11?

7 A I believe that question was already asked
8 and answered, but I'm happy to answer it again. To the
9 best of my knowledge, there were no charities of any
10 kind that I recollect that had been designated prior to
11 9/11 because terrorist designations were originally
12 limited to terrorist organizations.

13 Q So you --

14 A Were originally limited in the time that I
15 was in the Clinton administration at the State
16 Department were limited to terrorist organizations
17 primarily. There may have been some other narrow
18 exceptions, but at that point, the designation process
19 for terrorist sanctioning was in its infancy. It had
20 been done first to drug trafficking organizations and
21 to do it at all for terrorism was late in the Clinton
22 administration. And I don't believe that any charities
23 were designated during the time that I was inside the
24 Clinton administration. I believe it all happened
25 after 9/11.

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1 Q So it sounds like we can agree and we don't
2 need to review one-by-one that to the extent any
3 branches of IIRO, al-Heramain Muslim World League and
4 WAMY to the extent any of their branches outside of
5 Saudi Arabia were designated. They were designated
6 after 9/11, correct?

7 MR. CARTER: Objection to form.

8 THE WITNESS: As I've just said, I don't
9 believe there were designations of any charities prior
10 to 9/11. There were other actions undertaken in
11 relationship to charities including discussions with
12 other governments including Saudi Arabia, but there
13 were no designations.

14 BY MS. ERB:

15 Q And your report does not identify any
16 financial transfer from the Saudi headquarters of any
17 charity discussed in the report to Osama bin Laden,
18 correct?

19 A That's correct. From the bank records?

20 Q Yeah. From the documents you reviewed. So
21 here we're -- the documents you reviewed in connection
22 with the report, you don't recall seeing a financial
23 transfer from the Saudi headquarters, the customers of
24 Al-Rajhi Bank of any charity at issue to Osama bin
25 Laden, correct?

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1 A That would be from bank records or bank
2 documents, no, not from the documents produced in
3 discovery relating to the five-year period from
4 January 1998 to the end of 2002.

5 Q And your report does not identify any
6 financial transfer from the Saudi headquarters of any
7 of these charities to any of the 9/11 hijackers; is
8 that correct?

9 A I don't believe that's covered in my
10 report.

11 Q And your report does not identify any
12 financial transfer from the Saudi headquarters of any
13 of the charities at issue to any individual or entity
14 that at the time of the transfer was designated by the
15 United States or the United Nations, correct?

16 A Please repeat the question. I want to make
17 sure that I absorb it.

18 Q Your report does not identify any financial
19 transfer from the Saudi headquarters of any of the
20 charities at issue, so here again, IIRO, al-Heramain,
21 WAMY and the Muslim World League, to any individual or
22 entity that at the time of the financial transaction
23 the financial transfer was designated by the United
24 States or the United Nations?

25 A I think that's correct. I don't recollect

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1 any.

2 Q And your report does not identify any
3 financial transfer from the Saudi headquarters of any
4 of the charity customers at Al-Rajhi Bank to any
5 charity branch that at the time of the transfer was
6 designated by the United States or the United Nations?

7 A No, but with a caveat. That's an important
8 caveat. The documents that I reviewed -- and there
9 were thousands of pages that I reviewed. I can't say
10 how many more than thousands, but at least thousands
11 produced in connection with this litigation by ARB
12 generally lack identification of where the funds are
13 going with any specificity, to whom they're going,
14 where they're going.

15 So the lack of identifying information on
16 transactions pretty much across the board in terms of
17 their purposes, their uses, to whom -- who's receiving
18 them, how a charity like al-Hermain is actually moving
19 funds overseas, you can't tell that from the documents
20 produced by the bank in discovery.

21 This goes to the KYC issues that I identify
22 in my report which is when -- which is when you don't
23 create evidence that a bank would ordinarily have to
24 create in order to meet its KYC obligations. And
25 there's no detail on a report of a banking transaction.

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1 It becomes impossible to determine what happened with a
2 transaction.

3 So if one were to show me, for example -- I
4 am answering -- trying to answer your question as best
5 as I can -- a thousand or 10,000 or 50,000 pages that
6 were blank and contained purely 30,000 riyals of
7 transfer, that's all it said, you wouldn't know what
8 happened to those 30,000 riyals because it just said
9 transfer. There were any number of documents that I
10 reviewed that had that kind of limited information
11 where I couldn't tell where the funds were going.

12 So with that caveat and all of this is in
13 the context of that caveat that I can answer your
14 question, the documents do not show those transfers,
15 but the documents don't show where the transfers are
16 more or less across the board.

17 Q We'll come to some of the issues you just
18 raised, but just to be clear that your report does not
19 identify any tran -- financial transfer from the
20 headquarter customer -- charity headquarter customers
21 to a designate -- at the time of the transfer a
22 designated branch of the charity? Just that simple yes
23 or no.

24 A Yes, with -- yes, with the caveat that I
25 just made.

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1 Q That you just made. And your report
2 doesn't identify any financial transfer from any
3 official of the Saudi headquarters of any of these
4 charities that I've listed to Osama bin Laden, correct?

5 A That would be with a huge additional caveat
6 which is that someone like Aqeel Al-Aqeel, there are
7 findings about what he was actually doing on behalf of
8 Al-Qaeda. And of course the Saudi government itself
9 states that al-Hermain was notoriously involved with
10 Al-Qaeda and bin Laden. To state that the Saudi
11 government had a notorious -- notorious involvement as
12 articulated by the Saudi government was based on all
13 the evidence that they had, the Saudi government, about
14 what al-Hermain was actually doing.

15 That's not reflected in the records that I
16 saw in terms of what Aqeel Al-Aqeel was doing because
17 the bank records are largely blank. They show very
18 little about what Aqeel Al-Aqeel is doing with all the
19 funds that he's moving through ARB.

20 Q Do you know when Aqeel Al-Aqeel was
21 designated?

22 A Yes. It was after 9/11.

23 Q I believe in 2004. And do you know when
24 the Saudi headquarters of al-Hermain was designated?

25 A 2006 or '8. I can't remember.

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1 Q It was 2008. Your report does not identify
2 any financial transfer from any official of the Saudi
3 headquarters of any of the charities at issue to any of
4 the 9/11 hijackers, correct?

5 A Please repeat the question.

6 Q Your report does not identify any financial
7 transfer from any official of the Saudi headquarters of
8 any of the charities we were discussing to any of the
9 9/11 hijackers, correct?

10 A Correct.

11 Q And your report does not identify any
12 financial transfer from any official of the Saudi
13 headquarters of any of the charities at issue to any
14 individual or entity that at the time of the transfer
15 was designated by the United States or the United
16 Nations?

17 A With the caveat that a massive number of
18 the transactions that I reviewed did not contain
19 sufficient identifying information to determine where
20 the funds were being sent period.

21 Q But you saw nothing to suggest that they
22 were going to a person that was designated at the time
23 of the transfer?

24 A If the information wasn't recorded, I
25 didn't see it.

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1 Q And you -- your report does not identify
2 any financial transfer from any official of the Saudi
3 headquarters of any of the charities at issue to any
4 charity branch that at the time of the transfer was
5 designated as a supporter of terrorism, correct?

6 A Yes, with the same caveat.

7 Q Sir, in your report, you do not identify
8 any evidence that the non-Saudi branches of the
9 charities at issue were reporting or exchanging
10 information of any improper activity to the Saudi
11 headquarters, correct?

12 A That information is not covered in the
13 questions that were asked to me for this report.

14 Q Do you dispute --

15 A I would like to add to that. I was not --
16 I believe that I was not provided documents that
17 addressed that issue.

18 Q Do you dispute, sir, that the charities and
19 here I'm referring to the entire organization of these
20 charities, the headquarters and branches included and
21 referring to all of the charities that we've listed, do
22 you dispute that these charities were conducting
23 legitimate humanitarian work?

24 A I address that issue in my report and
25 precisely -- as precisely accurate as I could. I'm

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1 happy to go into that further if you would like.

2 Q And are you aware that when the United
3 States designated the Somali and Bosnia branches of
4 al-Heramain in 2002, treasury secretary Paul O'Neill
5 made clear that the Saudi headquarters of al-Heramain
6 was still conducting legitimate humanitarian work and
7 that it was the activities of the branches that had
8 engaged in -- the branches that had engaged in support
9 of terrorist activities?

10 MR. CARTER: Objection to form, misstates
11 the statement.

12 THE WITNESS: What I was about to say and
13 will now say is I think it's preferable to look at the
14 document as to what it actually says to be able to
15 address the full context of that joint designation
16 decision that was made at that time of the two
17 branches. I would emphasize that it was a joint
18 designation and that's an important part of the context
19 of that document.

20 BY MS. ERB:

21 Q So let's -- if the technician could turn to
22 tab 6 and if we can enter this as -- this is tab 6.

23 (Winer Exhibit JW4 was marked for purposes
24 of identification.)

25 BY MS. ERB:

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1 Q Sir, if you can turn to the sentence
2 beginning with while. It's the second sentence I
3 believe in the first paragraph. While the Saudi
4 headquarters for this private charitable entity is
5 dedicated to promoting Islamic teachings, we and our
6 Saudi Arabian allies have determined that the Somalia
7 and Bosnia branches of al-Hermain have been engaged in
8 supporting terrorist activities and terrorist
9 organizations such as Al-Qaeda. Do you see that?

10 A Yes.

11 Q So from that statement, would you agree
12 that the United States was designating only the
13 overseas non-Saudi branches to branches of al-Hermain?

14 A That's a legal fact.

15 Q And would you agree that Secretary O'Neill
16 recognizes in his statement that the Saudi headquarters
17 of the charitable entity was dedicated to promoting
18 Islamic teachings?

19 A He states that in the course of a longer
20 statement and that's what I meant by context. As I've
21 stated already in the course of the deposition today,
22 even the Saudi government ultimately concluded that the
23 entirety of al-Hermain was a corrupt charity
24 throughout the world and that it was notoriously was
25 the word that the Saudi government uses involved in

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1 providing support to Al-Qaeda and to bin Laden.

2 The United States began raising the issue
3 of al-Heramain with the Saudi government in the 1990s
4 and did not make progress on that. What was really
5 important about this event and I remember paying
6 enormous attention to it at that time March 11, 2002,
7 is that the United States had been trying to nudge the
8 Saudi government along into beginning to take action in
9 what was a huge current national security threat for
10 the United States, a huge current threat, not just a
11 past threat, but a current threat and potentially a
12 future threat.

13 And so it began this process of designation
14 with the Saudis on board. And since the Saudis had
15 been resisting and resisting and resisting and
16 resistance continued in a number of areas until the
17 Riyadh bombings of May 2003, this was a huge
18 achievement to get the Saudis on. So I see this as a
19 continued recognition that in addition to whatever else
20 they were doing, these charities were engaged in
21 humanitarian activities.

22 And back when I was at the State Department
23 in the 1990s, one of the difficulties we discussed in
24 addressing the whole Saudi issue is that the charities
25 had intermingled particularly in conflict zones. The

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1 provision of humanitarian support with the provision of
2 support for violent Jihad, political Islam that was
3 directed initially at conflicts between Muslims and
4 Christians or Muslims and Jewish government in the case
5 of Israel and then had been moving towards western
6 targets as evidenced in Mogadishu in 2001, as evidenced
7 in embassy bombings in 2008, the original World Trade
8 Center bombing in -- I said 2001. I should have said
9 1991. That's an error. Please correct it. The '91 --
10 '90 Jacob plot in '96, the terrorist bombings in '98.

11 So this is this ongoing terrorist threat in
12 which the charities were seen to be a significant part
13 of the problem because in addition to doing
14 humanitarian activity, they were doing the
15 nonhumanitarian activity in support of violent Jihad,
16 militant Jihad combat or conflict Jihad and then
17 terrorism.

18 So the important context here that's
19 critical is this is the United States government and
20 the Saudi government moving together in the same path
21 to begin to counter the threat and that's the
22 importance of the context of that statement.

23 Q And in that joint action in March 2002,
24 only the overseas non-Saudi branches of al-Heramain
25 were designated and the Saudi headquarters was not

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1 designated; is that correct?

2 A That's correct.

3 Q And your report does not identify any
4 instances of any of the non-Saudi we'll call them
5 overseas branch offices of the Saudi headquarters
6 requesting assistance from the headquarters for
7 terrorist or other nefarious purposes, correct?

8 MR. CARTER: Objection to form.

9 THE WITNESS: I did not review documents
10 between the branches and the headquarters of any of the
11 Dawah organizations in connection with my -- with this
12 expert report that I recollect. I don't think there
13 were any provided to me.

14 BY MS. ERB:

15 Q If we can turn, sir -- and at any point
16 that you want to take a break, you'll let us know. If
17 we can turn, sir, to section 7.15.1 of your report.
18 And this is on page 99. In 7.15.1, you are referencing
19 the so-called Golden Chain list, correct?

20 A Yes.

21 Q And you characterize the Golden Chain as a
22 group of, quote, wealthy individuals from the gulf
23 region who provided bin Laden and Al-Qaeda with money
24 on a regular basis, correct?

25 MR. CARTER: Objection to form.

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1 THE WITNESS: Can you show me what you're
2 reading from, please, which sentence?

3 BY MS. ERB:

4 Q It is the sentence where you're quoting the
5 source saying the Golden Chain consisted -- it's the
6 second sentence of 7.15.1. According to the source,
7 the Golden Chain consisted of wealthy individuals. Do
8 you see that?

9 A Yeah. I think this comes from the report
10 rather than my words.

11 Q Okay. And do you know when the Golden
12 Chain document was written?

13 A I don't.

14 Q Do you know --

15 A Not offhand. I don't remember.

16 Q You don't remember?

17 A No.

18 Q Do you know who wrote it?

19 A No, I don't know who wrote it.

20 Q Do you know the purpose for which the
21 Golden Chain document was written?

22 A One would have to make assumptions about
23 that. It was found in connection with a raid of a
24 group of people associated with Al-Qaeda. And so it's
25 an underlying document. So because it came from a raid

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1 on that facility, it essentially has been treated as an
2 Al-Qaeda document and a characterization of who
3 Al-Qaeda was raising money from.

4 Q Do you consider the Golden Chain to be a
5 reliable data point?

6 A I don't -- generally speaking, I look at
7 data points in connection with other activity. It's a
8 data point. I wouldn't call it reliable or unreliable.
9 It's a data point. What makes the data point useful
10 and gives it some credence is the manner of its
11 discovery and the information on it is pretty specific
12 about Al-Qaeda funders. I know there have been
13 different interpretations of the document.

14 Q Do you know whether the document identifies
15 that it is, in fact, a list of Al-Qaeda funders? Does
16 it say that anywhere?

17 A We can go to the document. It would be
18 best to go to the document itself to talk through what
19 it says.

20 Q Okay. We may come back to that. According
21 to the source in your -- in your statement in the
22 CIA -- excuse me. In your expert report, you say
23 according to the source, the Golden Chain consisted of
24 wealthy individuals who provided bin Laden and Al-Qaeda
25 with money on a regular basis.

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1 A That's right.

2 Q And you don't -- you don't recall ever
3 corroborating that fact, do you?

4 A The CIA describes various people as the
5 major donors for Al-Qaeda and they include in a number
6 of reports members of the Al-Rajhi family and sometimes
7 they include Sulaiman AA -- A Al-Rajhi as -- in
8 particular as a donor to bin Laden earlier of the
9 Afghan moves early and to Al-Qaeda. So that is for me
10 corroborating information because it means that they
11 took the totality on the data points they had seriously
12 and reached those conclusions and reached them with
13 greater certainty over time.

14 Q So do you consider the Golden Chain list to
15 be a credible or useful document?

16 A It's a data point in the context of all the
17 other data points. Beyond that, one would have to go
18 back and do a very detailed study of it, read the
19 document, interview people and so on. What I'm relying
20 on here is the totality of the information that -- in
21 front of me that I was able to review which included
22 the summary from al-Fadha listing Al-Rajhi. Now,
23 al-Fadha said what he was. He said it to the FBI.
24 That's not something I came up with. That's a fact and
25 he said this.

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1 Q Okay. I want to switch gears. So do you
2 want to keep going or do you need a break?

3 A We need a break apparently.

4 MS. ERB: Sorry. Apologies.

5 THE VIDEOGRAPHER: Off the record at 11:16.

6 (Deposition recessed at 11:16 a.m.)

7 (Deposition resumed at 11:29 a.m.)

8 THE VIDEOGRAPHER: Back on the record at
9 11:29.

10 BY MS. ERB:

11 Q Mr. Winer, if I could direct your
12 attention, please, to section 7.17 of your report which
13 begins on page 100 and we'll be looking at 7.17 through
14 about 7.24.

15 In this section of your report, you discuss
16 Omar al-Bayoumi and Fahad al-Thumairy and their alleged
17 activities in the United States before 9/11. Do you
18 see this discussion?

19 A Yes.

20 Q And in section 7.17, you characterize
21 al-Bayoumi as, quote, an individual who assisted two
22 terrorists hijackers in the United States ahead of
23 their participation in the 9/11 attacks, correct?

24 A Correct.

25 Q And in the same section, you rely on

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1 documents that describe al-Bayoumi's purported role and
2 relationship to the 9/11 attacks. Do you see that
3 statement? It's in the second sentence.

4 A Yes.

5 Q And you -- and you refer to the 9/11
6 commission report and the FBI inspector general,
7 correct?

8 A Is there a question?

9 Q Yes. Just asking you to confirm that you
10 see those sources referred.

11 A Yes.

12 Q And in 7.18, you refer to a memo written by
13 the staff of the 9/11 commission in 2003 and released
14 in 2014 as a source for your discussion of al-Bayoumi,
15 correct --

16 A Yes.

17 Q -- and its possible involvement in the 9/11
18 attacks? And in that same section, you state that
19 while the 9/11 commission did not find evidence
20 providing al-Bayoumi to be a Saudi intelligence asset,
21 the FBI did find evidence allegedly it says proving
22 al-Bayoumi to be a Saudi intelligence asset at the time
23 he was providing assistance to two of the 9/11
24 hijackers. Do you see this?

25 A Yes.

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1 Q And in the same section, you state that a
2 June 27th -- excuse me -- June 2017 FBI document
3 described Fahad al-Thumairy as quote another individual
4 identified within the support network of the 9/11
5 hijackers, correct?

6 A Yes.

7 Q And in this series of paragraphs and
8 discussion, the latest FBI report that you appear to
9 rely on in your report with respect to al-Bayoumi and
10 Thumairy is from 2017; is that right?

11 A I don't see a later reference offhand. If
12 there is one, I'm sure you can point it out. If there
13 isn't, there isn't.

14 Q Do you recall relying on any FBI report
15 after the 2017 report that you cite?

16 A Well, I'm aware that -- I'm aware that
17 there's another report of some kind which they
18 basically give up the government in the investigation
19 of al-Bayoumi.

20 Q Did you cite that later report in your
21 expert report?

22 A No.

23 Q Let's -- let's turn to that report.

24 A Sure.

25 Q It's at tab 53 which we should mark as

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1 Exhibit 5.

2 (Winer Exhibit JW5 was marked for purposes
3 of identification.)

4 BY MS. ERB:

5 Q Did you consult this later report in
6 preparing your expert report?

7 A I'm aware of it.

8 Q Do you recall reviewing it when you were
9 preparing your report?

10 A I don't recall one way or the other at this
11 the point. It would be best to look at the report
12 itself.

13 Q I think they're pulling it up. So report
14 is now on the screen. I would like to direct your
15 attention to page 10 of the report which is also marked
16 EO14040 number 10. And I'm looking at the last
17 paragraph on that page 10 beginning after the redacted
18 block based on the totality. Do you see that
19 paragraph, sir?

20 A I see a paragraph that begins material
21 support to terrorism. Is that what you want me to be
22 looking at?

23 Q So if you go under -- so the last paragraph
24 on the page in that section begins with based on the
25 totality.

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1 A Based on the totality of these
2 investigative efforts in coordination with the
3 assistant U.S. attorneys of the Southern District of
4 New York, it was jointly determined that insufficient
5 evidence existed to prosecute al-Bayoumi and al-Jarrah
6 for conspiring to assist the hijackers in furtherance
7 of the 9/11 attack, right.

8 Q And do you recall reviewing this part of
9 this 2001 FBI report in preparing your expert report?

10 A As I said to you, I don't recollect one way
11 or the other. I'm not sure.

12 Q Okay. I don't believe we saw this report
13 listed in your materials relied on.

14 A If it's not listed, then I didn't rely on
15 it.

16 Q Okay. And do you think that this report
17 and this data point from this report is relevant to the
18 prior data points in the intelligence leading up to
19 this 2021 report?

20 A No.

21 Q Can you explain that?

22 A Sure. The data points that I cite are all
23 particular data points and there's nothing in here that
24 addresses the question whether al-Bayoumi is working as
25 an intelligence asset for the Saudi government which is

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1 the -- one of the main points made here or that he
2 provided assistance to the 9/11 hijackers.

3 What it says is insufficient --
4 insufficient existed to prosecute these people for
5 wittingly conspiring to assist them in furtherance of
6 the attack. That's a judgment made by the FBI and U.S.
7 attorneys in connection with a criminal case which has
8 a particular standard of proof which is different from
9 civil cases.

10 I can't tell you what's in the back of
11 their decision because the information of what caused
12 them ultimately to make the decision is not available
13 to me, statute of limitations, evidentiary issues,
14 witness issues, ability to extradite out of Saudi
15 Arabia key people.

16 My understanding, for example, of Thumairy,
17 I believe it's Thumairy, he couldn't get back to the
18 United States because of terrorist concerns. He was
19 prevented from reentering the United States. And I
20 believed Bayoumi ultimately left the west and moved
21 back to Saudi Arabia and went underground.

22 So all of those would be considerations. I
23 know that in cases in which -- involving very, very
24 significant crimes that the U.S. government has
25 investigated, they can't always bring criminal cases

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1 against everybody involved in significant crimes. I
2 know that firsthand. And not just in private sector
3 side, but from the government side. So it's comparing
4 apples to oranges for me.

5 Q Are you aware that any of the individuals,
6 Bayoumi, Thumairy, are you aware that they've never
7 been designated by the United States?

8 A Yes. So?

9 Q And do you consider that the decision by
10 the FBI and United States not to prosecute these
11 individuals, do you think that that's not relevant for
12 the Court here as -- even as a footnote in your report?

13 MR. CARTER: Objection.

14 THE WITNESS: I really can't assess that.
15 There are lots of things about al-Bayoumi and about
16 Thumairy and about al-Jarrah who I don't recollect
17 writing about in my report. If I did, it was in
18 passing, but I just don't -- he's in passing. He's in
19 passing. He is --

20 BY MS. ERB:

21 Q You do reference --

22 A I do reference him. I had forgotten.
23 There's a whole section 7.1. He's the Islamic affairs
24 guy. Now I placed him. He's the person who was
25 working -- running various people on behalf of Ministry

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1 of Islamic Affairs out of the embassy which is a unit
2 that was then shut down completely because of its -- in
3 my -- it appears to me because of its unsound
4 connections and activities in any case.

5 It was a 220-page report. It wasn't a
6 400-page report. And surely there's lots more that I
7 could say on all of these topics if one wanted to
8 instead of write a hundred thousand words, if one put
9 in 200,000 words.

10 So there's inevitably a selection process.
11 There's also time constraints. So I could have added
12 in what I've just told you now and I'm sure you can
13 alert the Court to what I just said. It's here in the
14 deposition. So we've been able to cover it, I think.

15 Q So just to be clear, the report in 2021
16 determined that there was insufficient evidence and --

17 A To prosecute at that time.

18 Q Prosecute at that time --

19 A Yes.

20 Q -- in 2021? And you did not cite even in a
21 footnote this report for the benefit of the Court,
22 correct?

23 MR. CARTER: Objection to form. I think it
24 misstates the report.

25 THE WITNESS: There are probably a thousand

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1 facts. I don't know how many facts that I didn't cite
2 that I could have added to this report. The question
3 of what's happened in particular criminal cases and
4 it's relevance to a civil case was not a question that
5 I was asked. I responded to the questions that I was
6 asked.

7 BY MS. ERB:

8 Q If we can turn to 7.24 of your report and
9 this is on page 104.

10 MR. CARTER: I'm sorry. Nicole, where were
11 you?

12 MS. ERB: I'm sorry. It's paragraph 7.24
13 on page 104.

14 BY MS. ERB:

15 Q And this paragraph, sir, concerns an
16 individual by the name of Towayan al-Towayan who
17 according to your report was linked to Mr. al-Bayoumi
18 who we just discussed.

19 A Right.

20 Q And you're relying on an FBI document dated
21 September 27th, 2001?

22 A Right.

23 Q And you say that this document describes
24 certain connections allegedly between Mr. Towayan and
25 Mr. al-Bayoumi, correct?

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1 A Yes.

2 Q Your report also states that al-Towayan was
3 employed by Al-Rajhi Bank; is that correct? This is
4 still within 7.24.

5 A I don't state that. I quote a document
6 that states that.

7 Q Fair. That's fine. And are you aware that
8 Al-Rajhi Bank produced an HR file in connection with
9 Mr. Towayan in this litigation?

10 A No.

11 Q Do you recall reviewing any HR file
12 relating to Mr. Towayan in connection with this
13 litigation?

14 A I don't. I may have, but I don't recollect
15 it. I would note that on the pages that you're showing
16 me, more black marks or redacted material which is odd
17 since in my report, there are no such redactions. I
18 don't know what to make of these redactions on page
19 103, page 104 and maybe some elsewhere, but I'm saying
20 no and I really can't address that.

21 Q Sir, these redactions relate to FBI
22 protected information and we are working -- because we
23 are in the setting that we are in, we are not referring
24 to the elements of the report that include material
25 subject to an FBI protective order. If needed at a

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1 certain point, we can, you know, exit the room and have
2 people -- you can review this, but I'd like to continue
3 with my questions and then if you feel the need that we
4 need to go back --

5 A Because it's right above the material you
6 just asked me and there's a footnote below it that's
7 redacted as well. So I can't address that.

8 Q So what I -- if we can, I'd like to
9 continue with my questioning.

10 A Sure.

11 Q And we can come back and we can determine
12 whether we want to do that. So in your reviewed
13 materials, it appears that the document I'm referring
14 to that was produced by Al-Rajhi Bank was included in a
15 range. So it does appear that you at least reviewed it
16 in some form, but I suggest that we pull it up on the
17 screen --

18 A Sure.

19 Q -- so that we can look at it. And this is
20 tab 93 which is now JW6.

21 (Winer Exhibit JW6 was marked for purposes
22 of identification.)

23 MS. ERB: And this is 403 -- ARB-40369 if
24 that helps the technician.

25 BAILY: Counsel, say that one more time,

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1 please.

2 MS. ERB: This is tab 93.

3 BAILY: Okay.

4 MS. ERB: And the page is the second --
5 probably the second page of the PDF is the English
6 translation of ARB-40369 as the Bates number.

7 BAILY: I'm sorry, counsel. Can I have the
8 Bates number one more time? I think the one I have is
9 slightly different.

10 MS. ERB: So it is ARB-00040369. This
11 is --

12 BAILY: The note I have as 1093 is at
13 ARB-00000836 and ends on 840.

14 MS. ERB: Give us one moment.

15 (A discussion was held off the record.)

16 BY MS. ERB:

17 Q Mr. Winer, as a courtesy, I'm providing you
18 a hard copy --

19 A Thank you.

20 Q -- for your review.

21 BAILY: I see. There was two -- two
22 different tab 93s.

23 BY MS. ERB:

24 Q Okay. It's now on the screen as well, Mr.
25 Winer, if that's easier. Do you recall seeing this

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1 document?

2 A Yes, I do.

3 Q Okay. In your report, sir, in 7.24 --

4 A Right.

5 Q -- you are quoting the FBI document as
6 stating that al-Towayan was employed by Al-Rajhi, an
7 investment firm located in Saudi Arabia working in its
8 compliance section and that ARB was paying his costs
9 while he was in the United States to study English at
10 the request of Al-Rajhi Finance Company.

11 Do you see that language in 7.24?

12 A Yes.

13 Q Looking at the document that is on the
14 screen, do you see that in the second line, the author
15 of the document which is the director of the Sharia
16 oversight office, he says I would like to convey the
17 application of the lead overseer of the Sharia
18 oversight branch, Mr. Towayan, bin Abdullah Towayan in
19 whom -- in which he requests a study leave in order to
20 study English for six months. Do you see that
21 language?

22 A Yes.

23 Q So this document is saying that it was
24 Mr. Towayan's request to take study leave, correct?

25 A Right.

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1 Q Do you also see a handwritten note in the
2 English translation, it's in bold in the lower right of
3 the translation, beginning no objection?

4 A Yes.

5 Q And in this handwritten note, it says no
6 objection provided that all expenses including travel
7 accommodation, board and studies are at his own
8 expense. The company shall not bear any of said
9 expenses.

10 Do you see that?

11 A Yes.

12 Q So based on this document, the statement
13 that Al-Rajhi Bank -- the statement in the FBI report
14 that you quote that Al-Rajhi Bank was paying his costs
15 while he was in the United States to study is
16 inaccurate, correct?

17 MR. CARTER: Objection.

18 THE WITNESS: It might be. It might not
19 be.

20 BY MS. ERB:

21 Q Based on this document, it does not appear
22 that the bank had approved the study leave and agreed
23 to pay Mr. Towayan's cost while he was studying
24 English?

25 A That's what this document says. The FBI

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1 document says something different. One would want to
2 look at his payments and the record of his payments to
3 know more.

4 Q And do you -- have you seen anything in the
5 record to suggest that Al-Rajhi Bank was making
6 payments apart from this FBI data point?

7 A No.

8 Q Do you agree that according to this letter,
9 the bank said that it shall not pay -- bear any of said
10 expenses, correct?

11 A Yes. It seems -- it all seems very odd to
12 me. It's hard to understand what's going on.

13 Q Well, I think for our purposes, he made a
14 request. The request was conveyed. He made the
15 request to study English. The request was conveyed.
16 The request was not objected to for leave so long as he
17 covered his own expenses. Do you agree with that
18 interpretation of what's on the page?

19 MR. CARTER: Objection.

20 THE WITNESS: (Reviewing document.)

21 Here's the problem. Yes, that summarizes
22 what's on the page, but there's a problem here. And
23 the problem is is that we now know that Bayoumi was a
24 Saudi intelligence asset. He was working for the Saudi
25 government and he's working with Towayan in part. So

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1 you would have to be able to decode what was actually
2 happening.

3 You'd want to be looking in order to be
4 able to ultimately assess the implications of all of
5 this in detail -- this is one of many, many, many data
6 points in my report of course, not the only one -- what
7 was really going on which requires an awful lot of
8 investigation. We could go back to all the information
9 in the FBI report which I've just excerpted one section
10 and try to evaluate it overall.

11 But I can't tell you from this piece of
12 paper whether Al-Rajhi was or wasn't providing him
13 support in this period. I know he had bank accounts
14 with ARB. So it's difficult to evaluate. Your
15 interpretation is a plausible interpretation based on
16 what's written on this page. It may be a correct
17 interpretation based on this page, but you would then
18 want to look at other documents to make an ultimate
19 assessment about his relationship to Al-Rajhi during
20 the period of time he was in the United States.

21 Q Mr. Winer, if we can now switch gears again
22 and turn to page 38 section 4.10.9 of your report and
23 this is on page 38.

24 A Um-hmm. Yes.

25 Q And this is a paragraph of your report in

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1 which you state that Julaidan and your -- was one of
2 bin Laden and Al-Qaeda's principal terrorist
3 financiers.

4 Do you see that sentence?

5 A Yes.

6 Q It's about three -- halfway down the
7 paragraph. And you also state that -- at the last
8 sentence that Julaidan himself had accounts at Al-Rajhi
9 Bank.

10 A Yes.

11 Q Do you know when Mr. Julaidan was
12 designated?

13 A After 9/11.

14 Q September 6th, 2002. And do you -- if you
15 look at tab 68 which if we can mark as an exhibit.

16 (Winer Exhibit JW7 was marked for purposes
17 of identification.)

18 BY MS. ERB:

19 Q And this is ARB-39558, and you'll want to
20 go to the second page of the PDF. And if we can scroll
21 down to the English translation which looks like it's
22 the fourth page of the PDF, yeah. So this is a
23 document produced by Al-Rajhi Bank.

24 Did you review this document, do you
25 recall?

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1 A Yes. This relates to the response to
2 SAMA -- SAMA's listing requirements when they were made
3 which was in response to UN designations. And
4 monitoring was undertaken when SAMA reached out to the
5 banks and asked them to address the kinds of people
6 who had been sanctioned by the UN. That's my memory of
7 it.

8 Q And if you look on the chart, if you go
9 down, you'll see -- one, two, three, four, five, six
10 rows down, you'll see a reference to Mr. Julaidan. And
11 then if you scroll to the status column at the far
12 right, you'll see that the status is listed as blocked.

13 A Sure.

14 Q And if you go down further to number 56 in
15 the rows, but it's actually more like the 13th line
16 down, again, you'll see his name and you see the status
17 of his account as well.

18 A I actually can't read anything on this
19 because it's too small. So if I'm supposed to review
20 something, it would need to be made bigger. Thank you.

21 Q I feel your pain, Mr. Winer.

22 A Let us continue and you'll feel it more.

23 Q So in your report, you mention -- well, let
24 me just confirm. You see that in the row listed 56 all
25 the way to the right, it's also -- the word blocked is

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1 included there, correct?

2 A I can't quite see it because it's -- the
3 way this is set up on my screen, but I see the first
4 letters B-L-O-C-K and I accept your representation that
5 the word is blocked.

6 Q Very good. Very good. So in your -- in
7 your report, you mention that Julaidan had accounts at
8 Al-Rajhi Bank, but your report does not mention that on
9 request by its regulator after the designation of
10 Mr. Julaidan when the regulator asked for statements of
11 details of the accounts that Al-Rajhi Bank responded
12 and showed that these accounts were blocked.

13 A Which section? We're in section 4 of the
14 report?

15 Q So --

16 A So section 4 of the report is in response
17 to the question is there evidence that Al-Qaeda relied
18 on sympathetic financiers. It might be -- hold on a
19 second. Let's just see what the topic is because it
20 goes to the question that I was asked.

21 So the question here is were there
22 incidents in which purported charities were implicated
23 in money laundering for criminal activities including
24 the financing of terrorism and/or specific attacks
25 before September 11th, 2001. The question was not

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1 whether banks were blocking accounts as required by UN
2 sanctions and required by their country and their
3 regulator after September 11th, 2001. So that's the
4 question that this relates to in this section.

5 Q And would you agree in your review of this
6 document that this document appears to reflect what you
7 just described which is that Al-Rajhi Bank blocked the
8 account of Julaidan after he was designated after 9/11?

9 A Yes.

10 Q And provided that information on his bank
11 account being blocked to its regulator, SAMA?

12 A Yes. I'd like to address this slightly
13 longer in order to describe the issue more broadly.
14 The documents that I reviewed showed Al-Rajhi Bank
15 along with other banks in Saudi Arabia being called
16 together and having a committee formed and having
17 regular communications with SAMA following 9/11 in
18 which they blocked accounts as their regulator told
19 them to do on the basis of UN lists. And that's
20 consistent with U.S. government reporting which showed
21 that Saudi Arabia was undertaking efforts in response
22 to UN lists in that period.

23 Q Thank you.

24 I'd like to turn if we can to discuss the
25 FATF recommendations that you raise in your report.

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1 You specifically cite at section 5, I believe. Let me
2 just confirm. On page 42 of your report and this is in
3 response to question 3 and we're going to be looking --
4 it's really pages 42 probably through to 48 of your
5 report where the FATF 40 recommendations come up. You
6 specifically cite the 96 FATF 40 recommendations in
7 your report?

8 A Yes.

9 Q And you reference the -- in these pages,
10 you cite a number of different recommendations,
11 obviously not all 40, but the ones that pertain to
12 financial institutions.

13 A Yes.

14 Q And are you familiar with the FATF
15 introduction which we can pull up if it would be --

16 A I haven't memorized it, so it would be best
17 to pull it up.

18 Q Okay. So this is tab 35. It will be
19 Exhibit JW8.

20 (Winer Exhibit JW8 was marked for purposes
21 of identification.)

22 BY MS. ERB:

23 Q And if we could go to I believe it's page 2
24 of the PDF.

25 A I'm going to need to have that magnified,

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1 please.

2 Q And I'm focused on the fifth paragraph
3 down.

4 A Yes.

5 Q And --

6 A I'm familiar with that.

7 Q Okay. And there's a -- the second sentence
8 says the recommendations referring to the FATF
9 recommendations are therefore the principles for action
10 in this field for countries to implement according to
11 their particular circumstances and constitutional
12 frameworks allowing countries a measure of flexibility
13 rather than prescribing every detail.

14 Do you see that?

15 A Yes.

16 Q And so it was your understanding that the
17 FATF recommendations were designed as recommendations
18 for implementation at the state level?

19 A Yes, of course.

20 Q And these were not obligations on private
21 market actors, banks, et cetera? Rather they were
22 recommendations that states would implement in their
23 laws?

24 MR. CARTER: Objection to form.

25 THE WITNESS: That's not how I would

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1 characterize it precisely. It's accurate that states
2 were to implement the 40 recommendations. That's
3 accurate. There's also the group of bank supervisors
4 which was operating at the same time to create
5 standards for financial institutions directly which in
6 turn essentially referenced the FATF recommendations
7 and established them as minimum standards for the bank
8 supervisors who were their direct members to impose on
9 the banks that they regulated.

10 There was a very complicated process going
11 on in that period of the late 1990s of establishing
12 consolidated supervision for banks. This was initiated
13 in substantial part in response to the collapse of
14 BCCI, a bank that I spent years investigating as a
15 senate investigator in the late 1980s and late 19 --
16 early 1990s before I went to the State Department.

17 So because of the need to have consolidated
18 supervision and integration of banks' standards and
19 practices around the world while it was up to the
20 national level to have supervisors supervise their
21 banks nationally, it was part of the international
22 system to protect banks internationally because of the
23 corresponding banking system.

24 And so you have to understand the FATF
25 recommendations as being cheek by jowl with the Basel

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1 Committee recommendation which were going into place at
2 the same time for bank supervisors because bank
3 supervisors also had obligations really to one another
4 as a kind of college of supervisors in order to prevent
5 systemic risk. Systemic risk is created when any
6 country's financial regulatory systems is inadequate in
7 relationship to other countries.

8 And I could go on in this. I don't want to
9 exceed the scope of your question too broadly, but I'm
10 trying to put an appropriate context on the question.
11 So, yes, but it's within this broader framework and
12 there's one more point from the text here going back to
13 the text. Somewhere it says these are intended to be
14 universal application and I think that's on this page.
15 Give me a moment. Here it is.

16 It's paragraph 4. These 40 recommendations
17 set up the basic framework for anti-money laundering
18 efforts and they're designed to be of universal
19 application. And the reason again is because of the
20 problem of systemic risk for the banking system as well
21 as the fact that international criminal activity, cross
22 border financial activity migrated to jurisdictions and
23 inadequately put protections in place.

24 And my work on a day-to-day basis at the
25 State Department literally day-to-day in the late 1990s

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1 was among other things trying to get countries to
2 actually put the standards in place in a coherent and
3 comprehensive fashion.

4 BY MS. ERB:

5 Q And just coming back to my question which
6 is just that the FATF recommendations were designed and
7 are intended to be adopted at a state level? These are
8 state recom -- recommendations for states?

9 A Yes, but the state level may be country
10 based in terms of the governments or it may -- it's
11 also regulator based. So in some countries, regulator
12 status is somewhat independent of the government. It's
13 not part of the executive branch. Like the Federal
14 Reserve is not told what to do by a president,
15 whomever. It's a separate independent. It's these
16 complementary systems being designed at the same time
17 in an integrated fashion.

18 Q And when states implement the FATF
19 recommendations whether, you know, through the bank
20 supervisors you call it or regulator or otherwise, they
21 don't necessarily implement all 40 recommendations,
22 correct?

23 A They don't implement all 40 recommendations
24 necessarily in exactly the same way. There was a --
25 there was a system of mutual assessment that was put

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1 into place from the creation of the FATF as well which
2 included the development of regional bodies as well as
3 the global body because countries would be found to be
4 deficient in their implementation of various
5 recommendations by their peers and be asked to -- to
6 put further measures in place in order to ensure that
7 there were not weak links in the chain because banking
8 is like water.

9 If you have part of your water system, one
10 pipe that has got arsenic or lead in it like in Flint,
11 Michigan and there's lead in one area, that water can
12 flow to all kinds of other areas. So it's incredibly
13 important that banking regulation and enforcement not
14 involve regulatory arbitrage or enforcement arbitrage
15 because that then creates dirty nodes which can infect
16 well beyond the original location. So you have to have
17 the barriers in place locally.

18 So the financial system is like the water
19 system. You have to be able to have it addressed
20 throughout because the pipes are all connected to one
21 another in corresponding banking.

22 Q But you would agree that if you were to
23 review states that have adopted the FATF recommendation
24 that not all states are compliant with all 40
25 recommendations, correct?

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1 A It's a -- there's a process for coming into
2 compliance, that's right. And I was working on that
3 process at the State Department in the late 1990s
4 country by country.

5 Q Do you know if the United States is
6 compliant with the FATF 40 recommendations?

7 A At any particular moment, it's -- you would
8 always be trying to improve, but generally speaking,
9 yes.

10 MS. ERB: So if we can pull up tab 72 which
11 we'll mark as an exhibit.

12 (Winer Exhibit JW9 was marked for purposes
13 of identification.)

14 MS. ERB: Excuse me. I misspoke. Tab 73,
15 Exhibit JW9.

16 BY MS. ERB:

17 Q So this is a web page --

18 A Sure.

19 Q -- from the FATF website and this is the
20 United States web page.

21 A Sure.

22 Q And if we flip to the second page of the
23 PDF and if we can look at the second paragraph. The
24 United States is compliant on nine of the 40
25 recommendations and largely compliant on 22 of them.

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1 A Let's take a look at the further
2 description of it, please. I can't evaluate that
3 without looking at it.

4 Q Okay. But just -- just -- I'm not asking
5 you to evaluate it. I'm just asking you whether you
6 agree that here the FATF is reporting that the United
7 States is compliant on nine of the 40 recommendations,
8 largely compliant on 22 and partially compliant on five
9 and not compliant on four. Is that what this says?

10 MR. CARTER: Objection.

11 BY MS. ERB:

12 Q I'm not asking you to evaluate. I'm just
13 asking you to tell me if that's what this says.

14 A I have not reviewed this particular
15 document or this particular assessment before. And so
16 what's the date, please?

17 Q So this was pulled from the website and it
18 should be current. This was -- this is not -- we're
19 not looking at a -- going back in time when it was
20 first -- it says, though, United States was a member
21 since 1990.

22 A Yes. I would --

23 Q So if you look -- if you go to page 3.

24 A I'm willing to stipulate that the document
25 says whatever the document says, but it's not a

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1 document that I reviewed in connection with my report.

2 Q That's fine.

3 A And it doesn't respond to any question that
4 I was asked in my report.

5 Q That's fine too. If we can go to page 3 of
6 the PDF. It looks like this was from 2020 and it was
7 the mutual evaluation of the United States.

8 A I know what this is about. This is about
9 beneficial ownership. That's what this is about.

10 Q So all 40 recommendations are about --

11 A I don't know. I'd have to read it, but
12 it's about beneficial ownership which I've been unhappy
13 about for years.

14 Q Okay. So if we go back to page 2, please.

15 A Didn't there used to be beneficial
16 ownership requirements covering trusts and covering
17 LLCs? And the United States has had a vigorous
18 domestic lobby of people who want to be able to hide
19 their money, the ultimate ownership of companies which
20 has impeded the United States moving ahead in this
21 particular area and that may be what this is about, but
22 I've never seen this document before.

23 Q Okay.

24 A So I don't know.

25 Q Okay. But going back to the intro page

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1 where it talks -- just the stats of the 40
2 recommendations that -- you know, the FATF 40, right,
3 and this is where the U.S. is in its compliance with
4 those 40 recommendations. Would you agree that that's
5 what this document is stating?

6 MR. CARTER: Objection. He's told you
7 three times he needs to read the document to understand
8 what that statement is referring to.

9 THE WITNESS: I've just seen for the
10 first -- forgive me, but I've just seen for the first
11 time on this next page because, again, I've never read
12 this document, never seen the document before, never
13 been asked to look at it. I don't know what's in it.
14 I see this on the FATF website. It's almost certainly
15 the result of the mutual assessment because I know the
16 FATF processes.

17 I would like to read the particular
18 criticisms and evaluate the particular criticisms. I
19 could tell you what it means. I could also evaluate it
20 against other countries. I haven't done that, but I
21 haven't done any of that work. So I can't really
22 address it.

23 BY MS. ERB:

24 Q Okay. And I'm not asking for your
25 evaluation. I'm just asking whether you agree that

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1 when FATF says that the United States is compliant on
2 nine of the 40 that these are the 40 FATF
3 recommendations that you refer to in your report?

4 A No. They are not the 40 FATF
5 recommendations I refer to in the report. That's a
6 mistake.

7 Q Because they've been updated?

8 A They've been changed multiple times.

9 Q Okay. Okay.

10 A I'm referring to -- my report refers to the
11 1996 ones. That's what I was asked to look at. I
12 wasn't asked to look at the special recommendations on
13 terrorist finance from 2001.

14 Q Right. And we're going to come to that.

15 A Let alone -- let alone any of the later
16 ones.

17 Q Right. And we're going to -- we're going
18 to come to that as well. Let's -- let's look at if we
19 can tab 72 and let's mark that one Exhibit JW10.

20 (Winer Exhibit JW10 was marked for purposes
21 of identification.)

22 BY MS. ERB:

23 Q And so again we're on the FATF website and
24 this is for Saudi Arabia.

25 MR. CARTER: When is this?

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1 BY MS. ERB:

2 Q And if you go to the second page of the
3 PDF, Saudi Arabia has been a member since 2019 and
4 there was a 2018 assessment of the kingdom's measures
5 to tackle money laundering and terrorist financing.

6 A Right.

7 MR. CARTER: I'm just going to object to
8 all of this. It's material he's not seen relating
9 to --

10 MS. ERB: I understand.

11 MR. CARTER: -- 20 years after the period
12 of conduct at issue.

13 MS. ERB: I understand.

14 MR. CARTER: I don't understand what this
15 has to do with anything.

16 MS. ERB: It has to do with the fact that
17 he -- he's relying on the FATF 40 recommendations in
18 his report and I'm referring to house states implement
19 and adopt those recommendations as they are updated
20 over time and we will come to that. So if you'll bear
21 with me, I'd like to continue with my questions.

22 BY MS. ERB:

23 Q If we can go to page 3.

24 MR. CARTER: Just a continuing objection.

25

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1 BY MS. ERB:

2 Q Page 3 of the PDF. And it says Saudi
3 Arabia is now compliant on 17 of the 40
4 recommendations, largely compliant on 21 and partially
5 compliant on two. Do you see that?

6 A Yes.

7 Q And would you agree again that without --
8 I'm not asking you to do an evaluation of which ones,
9 et cetera, but would you agree that the statement here
10 is that Saudi Arabia is compliant on 17 of the 40,
11 largely compliant on 21 and partially compliant on two?

12 MR. CARTER: Objection to form.

13 THE WITNESS: I don't know the date of the
14 documents. It appears to be a document related to
15 around 2020 as near as I can tell because it references
16 a 2018 mutual evaluation. I have not read the document
17 before, never seen the document. And it's outside the
18 scope of my expert report, but it says Saudi Arabia's
19 progress and strengthening measures to tackle money
20 laundering and terrorist finance. That's good that
21 they're making process.

22 BY MS. ERB:

23 Q And if we can go to the next page of the --
24 it looks like the date is 17 January 2020. So coming
25 back to your report on the 1996 --

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1 A Yeah.

2 Q -- FATF recommendations --

3 A Yeah.

4 Q -- you agree that Al-Rajhi Bank's
5 compliance with the principles in the FATF
6 recommendations would come through its regulator, SAMA,
7 correct?

8 A The standards would be promulgated by its
9 regulator, SAMA. The standards were promulgated by its
10 regulator, SAMA, actually the year before the recom --
11 the 1996 recommendations came. And I believe it was
12 late 1995 when SAMA put together its guidelines and
13 issued its guidelines. That's my memory.

14 At the time, Saudi Arabia did not have
15 anti -- an anti-money laundering criminal statute or
16 terrorist finance criminal statute, but its regulator
17 did put the FATF 1996 recommendations into place to a
18 very considerable extent for the financial institutions
19 of Saudi Arabia.

20 Q And in paragraph 5.2 of your report where
21 you describe the -- the 1996 recommendations, you say
22 in 1996 under the U.S. presidency of FATF, the
23 organization amended the 40 recommendations explicitly
24 to cover all serious crimes including terrorism,
25 correct?

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1 A That's what it says, uh-huh.

2 Q Now, in the 1996 introduction to the 40
3 recommendations which you cite, they make -- that intro
4 makes no mention of counterterrorism, correct?

5 A Correct.

6 Q And in your report at 5.4, and this goes on
7 for a while, you're quoting the FATF 4 -- 1996 FATF 40
8 recommendations, correct?

9 A Yes.

10 Q And none of those recommendations as quoted
11 in your report include the word terrorism, correct?

12 A That's right. They don't include the word
13 terrorism. They don't include the word corruption.
14 They don't include the word theft. They don't include
15 the word bribery. They don't include the word murder.
16 They don't include the word rape. They don't include
17 the word extortion. They don't include the word fraud.

18 They do include only one type of crime and
19 that's because the FATF previously had covered that
20 crime which was drug trafficking. Everything else is
21 within the context of all serious crimes. Since Saudi
22 Arabia and the United -- to the best of my memory and
23 the United States and most other countries at that
24 point included various acts of terrorism as serious
25 crimes as a result of the ceding to various UN

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1 conventions covering serious crime like blowing up
2 airplanes, that kind of thing.

3 And there's a whole list of them. Those
4 would be -- terrorism would be covered under serious
5 crimes, but it was no more specifically mentioned than
6 was murder or rape or corruption or extortion or theft
7 or fraud or any other drug -- any other crime other
8 than drugs which had been the original coverage.

9 Q And would you also agree that in 1996, the
10 FATF guidelines that you quote do not contain any
11 particular recommendations on charities or
12 nongovernmental organizations?

13 A I don't recollect that there were any, but
14 I don't believe there were any. But I don't recollect.
15 I think that they're broader principles at that point
16 that they're talking about. Charities were under
17 discussion in the UN system in connection with
18 terrorist finance prior to 911 which is why the
19 terrorist finance convention of 1999 was put into place
20 and there's reference to it in connection with those
21 deliberations. I think I covered that in the report.

22 Q And earlier in your testimony, you made
23 reference to the October 2001 FATF updates --

24 A Yes.

25 Q -- to the recommendations. And these would

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1 have been one month after 9/11 --

2 A Yes.

3 Q -- updated recommendations?

4 A That's correct.

5 Q And in footnote 109 of your report on page
6 43, you state that the updated FATF 40 recommendations
7 are outside the scope of your expert report; is that
8 right?

9 A I'm sorry. I don't follow what you just
10 said.

11 Q So in the last sentence of footnote 109
12 since the 9/11 attacks --

13 A Right.

14 Q -- the FATF 40 recommendations have been
15 repeatedly updated, but those updates are outside the
16 scope of this --

17 A Yes. I ref -- I reference what happened in
18 2001 somewhere, I think, but the question that I was
19 asked was prior to September 11th, 2001.

20 Q I understand.

21 A So I was trying to be responsive to the
22 question that was asked and to limit myself in that
23 way.

24 Q But it's your understanding then that in
25 October 2001, the FATF updated its recommendations?

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1 A Oh, yes.

2 Q Okay. And in the history on the FATF web
3 page which we can go back to if you'd like to see it,
4 but there's a statement that says in October of 2001,
5 the FATF issued eight special recommendations on
6 terrorist finance.

7 A That's correct.

8 Q Okay. So -- so would you agree that the
9 FATF recommendations before 9/11 did not contain a
10 reference -- did not target terrorist financing, but
11 after 9/11 on Oct -- in October 2001, the FATF
12 promptly, swiftly undertook to update its
13 recommendations to address terrorist financing?

14 MR. CARTER: Objection.

15 THE WITNESS: I agree that in 2001, the
16 FATF gave much more explicit guidance on how to address
17 terrorist finance because of what happened with the
18 9/11 attacks. As mentioned earlier, terrorism is a
19 serious crime and 1996 incorporated all serious crimes.
20 And I was around then in the U.S. government discussing
21 these issues with other countries including in
22 connection with FATF and UN activities both.

23 And the issue was is that there were a lot
24 of discussions about how individual countries were
25 going to regard terrorism, who was a terrorist, who

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1 wasn't a terrorist. And there was not harmonization on
2 all of that and that was not only true of terrorism.
3 It was also true of corruption which was another area
4 where certain countries particularly in the European
5 union in that period of time that didn't want to
6 express mention of active bribery. That is paying
7 bribes because bribes were still tax deductible in the
8 European union.

9 So a decision was made to list all serious
10 crimes knowing that terrorism was included among all
11 serious crimes because pretty much all the members of
12 FATF, maybe all of them had signed on to various
13 terrorist conventions and, therefore, had made an
14 international commitment to treat terrorism -- pardon
15 me -- as a serious offense. So that's my understanding
16 of the context of it.

17 BY MS. ERB:

18 Q Going back to the FATF website and here
19 it's the description of the history of FATF and I
20 suggest that we do pull this up. This is tab 83.

21 (Winer Exhibit JW11 was marked for purposes
22 of identification.)

23 THE WITNESS: While you pull that up, let's
24 take a five-minute -- not 10 or 15, but a five-minute
25 break.

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1 MS. ERB: Five-minute break, sure.

2 THE WITNESS: Yes, just five. Very brief.

3 THE VIDEOGRAPHER: Off the record at 12:28.

4 (Deposition recessed at 12:28 p.m.)

5 (Deposition resumed at 12:33 p.m.)

6 THE VIDEOGRAPHER: Back on the record at
7 12:33.

8 BY MS. ERB:

9 Q So when we -- before the break, we were
10 pulling up tab 83 which is marked as JW Exhibit 11.
11 And this is again a page from the FATF website. And if
12 you look at the second paragraph, the FATF states that
13 it was given responsibility to examine money laundering
14 techniques and trends, review the action already taken
15 at a national or international level and to set up
16 measures needed to combat money laundering.

17 In 2001, the FATF expanded its mandate to
18 also combat terrorist financing. Would you agree that
19 the FATF expanded its mandate as to what -- the scope
20 of what it was covering in 2001?

21 A It expanded the scope of its
22 recommendations to go beyond 40 recommendations which
23 covered all serious crimes to add -- which necessarily
24 includes terrorist crimes as defined in UN conventions
25 to expressly provide direction and guidance on how to

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1 address terrorist financing. So in that sense, its
2 mandate expanded, but it already included all serious
3 crimes prior to that date. So I would understand it to
4 be a reference to the special recommendations on
5 terrorist finance that were made in October 2001.

6 Q And going -- going back to the operation of
7 these recommendations at a state level, we described
8 earlier that there would be implementation by the state
9 through its bank regulator where the recommendations
10 are relating to financial institutions and that would
11 become -- to the extent they're implemented, it becomes
12 part of local law, state law; is that correct?

13 A Yes. Yes, that's correct.

14 Q Okay. And in the case of Al-Rajhi Bank,
15 Al-Rajhi Bank's regulator is the Saudi Arabian monetary
16 authority, SAMA, correct?

17 A Correct.

18 Q And --

19 A It's changed its name since. That's now
20 the Saudi Central Bank, but it was SAMA at the time.

21 Q And to the extent Saudi Arabia and SAMA
22 adopted the FATF 40 recommendations, those
23 recommendations would be implemented through Saudi law,
24 Saudi circulars, SAMA circulars, guidelines, et cetera,
25 right?

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1 A Yes.

2 Q And are you -- do you consider yourself an
3 expert on Saudi banking regulations?

4 A I am on the Saudi banking regulations
5 relating to money laundering in terms of the 1995 I
6 think November circular that was issued because I spent
7 a lot of time with that. I have not spent a lot of
8 time with every other Saudi bank regulation. I am an
9 international banking regulatory attorney. I continue
10 to practice in the area and I have had clients within
11 the past 12 months seeking my advice on particular
12 elements of gulf state banking regulation up to the
13 current day. That's the best answer I can give you.

14 Have I read every Saudi circular governing
15 banks, no. I would look at it in connection with a
16 particular matter as an attorney or as an expert
17 witness.

18 Q But you're not a Saudi -- you're not a
19 Saudi banking law expert?

20 MR. CARTER: Objection.

21 THE WITNESS: I'm an expert in comparative
22 banking law. I've been a banking regulatory attorney
23 in various forms except for my -- periods of my
24 government service over much of the last 20 years, not
25 all of it, but much of it including currently. It's an

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1 area where I have practiced even recently.

2 Any type of banking regulation you look at
3 in terms of as a -- in a comparative way unless it's
4 purely domestic application, in a comparative way for
5 the reasons I articulated before which is how does it
6 compare to the regulations in other countries, what is
7 the relationship of it.

8 So, for example, I'm trying to answers your
9 questions directly as I can. Gulf states currently are
10 trying to address elements of what they have to do in
11 connection with U.S. laws on the reporting of entities
12 that may have relationships with U.S. persons. And so
13 as banks get -- as a new bank comes into existence,
14 they may want guidance on will the following forms,
15 will the following boilerplate meet the requirements of
16 the EU, will they meet the requirements of the U.S.,
17 that kind of thing.

18 So you drill down as an attorney on a
19 particular matter on a particular issue in order to
20 understand it based on the laws and regulations that
21 are applicable to understanding that issue. So in that
22 context, I look at Saudi banking law from time to time
23 as need be. I have spent a lot of time with that
24 original circular.

25 BY MS. ERB:

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1 Q On a comparative basis as you say?

2 A On a comparative basis and trying to
3 understand how it would work in connection with also
4 mutual evaluations because I was deeply involved with
5 the mutual evaluation process in the 1990s.

6 Q Which again is at the state level?

7 A The mutual evaluation process is at a
8 college of state levels which is to say different
9 countries' regulators and experts. It's not just the
10 regulators. It's people from the State Department,
11 people from the Treasury Department, people from the
12 Justice Department, people from the banking regulatory
13 agencies like the Federal Reserve where they control
14 the currency will come together to evaluate an
15 individual country's FATF compliance like the document
16 you showed me from 2020 which I had never seen before
17 because I hadn't been asked to look at it.

18 Back in the 1990s which is what my report
19 covers really fundamentally up to period 2001 and most
20 of the questions, the key document was the 1995 SAMA
21 circular and that would have been what would have been
22 evaluated in a comparative basis.

23 Q And so you would not in your work as a
24 comparative lawyer or expert on comparative banking
25 standards, international banking standards, you would

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1 not consider yourself an expert as to whether a bank
2 outside of the United States has complied with its
3 local laws and local requirements?

4 MR. CARTER: Objection.

5 THE WITNESS: That actually depends. I had
6 been asked that question by gulf state banks because in
7 the case of some gulf states and some situations, their
8 local laws are dependent on their status by the United
9 States as part of a bilateral agreement to have their
10 banks credentialed in particular ways.

11 So there's both multilateral and bilateral
12 requirements that local banks may be relying on. So
13 the question might well be is this language going to be
14 good enough for the United States in a way that the
15 gulf states' regulator will say this is absolutely fine
16 and copacetic and we're not going to have a problem.
17 That's an actual case that I was asked to provide
18 regulatory guidance on by a client within the past year
19 as a for -- as a for example.

20 So I think if you're trying to say do I
21 provide advice to domestic banks of Saudi Arabia on
22 purely domestic Saudi issues, no. Would I provide
23 advice to a Saudi bank on an issue in which there are
24 obligations not only to their own regulator but which
25 has implications for their correspondent banking

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1 relationships which are absolutely essential for their
2 function, yes. So the answer is not a black and white
3 simple question. It just depends on the issue.

4 Q But you certainly based on everything you
5 said today in this -- in this deposition, you would not
6 hold yourself out as a Saudi banking lawyer?

7 A I'm not qualified to practice law in Saudi
8 Arabia, so it would not be proper for me to advise a
9 Saudi institution on a purely Saudi issue unless there
10 are international issues associated with it. I have
11 been asked as I stated by clients to opine on issues
12 that relate to local laws of local gulf states because
13 of their interrelationship with international banking
14 standards including obligations to the United States,
15 but not just the United States.

16 Q And have you ever conducted a financial
17 audit of a Saudi Arabian bank?

18 A I have not.

19 Q Have you conducted a financial audit of any
20 bank?

21 A It depends what you mean by audit. I have
22 participated in working with auditors in designing
23 compliance reviews and interpreting the results of the
24 compliance reviews in -- of more than one bank based
25 overseas in order to assist that bank in coming into

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1 compliance with not only its domestic money laundering
2 standards and international money laundering standards,
3 but with its needs in relationship to its corresponded
4 banking relationship.

5 So when a bank gets in trouble with
6 corresponded banks, it may call on me, for example, to
7 help do a clean up. What do we have to do to get out
8 of the mess that we're in in terms of compliance. And
9 there I might retain a forensic auditor to do the
10 auditing part. I might help them design what the audit
11 program is going to look like. I'll look at their --
12 what their proposed approach is going to be, make
13 recommendations. I'll then interview people in the
14 bank. I'll look at bank records. I've done that from
15 time to time.

16 Q Have you ever done that exercise with a
17 Saudi bank?

18 A No.

19 Q And when you are looking at SAMA
20 regulations, you are looking at the English versions,
21 correct? You don't speak Arabic?

22 A I do not read Arabic. I do not write
23 Arabic. I don't speak Arabic. Through all of my
24 years, I've never mastered a second language adequately
25 to be able to do that without assistance in a way that

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1 I feel comfortable with when it comes to legal
2 documents which is why I rely on translators as I did
3 throughout the time I was a diplomat to assure me the
4 documents are accurate in both languages.

5 Q And in preparing your report in this case,
6 did you consult at all with a Saudi law expert or a
7 Saudi banking law expert that spoke Arabic?

8 A If I had done that, I would have reported
9 that in this report.

10 Q And you were previously disqualified from
11 opining on the banking laws of a foreign country; is
12 that correct?

13 A Not exactly. It's not exactly correct, no.

14 Q And here I'm referring to the McDonald case
15 which related to Canadian interpretation of the laws of
16 Canada. Do you recall that?

17 A I'm aware of the case and I'm aware of what
18 you're referring to. My understanding from the
19 attorneys, and I was not present during the discussion
20 with the judge, is that I actually was not
21 disqualified. There was a decision made to limit the
22 scope of what I would cover to international
23 comparative law because I was not a Canadian lawyer.
24 And that decision was made not to put that part of my
25 testimony as -- within the scope of the testimony that

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1 I gave to the judge, but I believe I was not
2 disqualified.

3 Q So the -- the --

4 A I testified in the case extensively on
5 international money laundering standards and their
6 application to that particular case.

7 Q Okay. The Court in that case stated
8 that -- let me just read this. It says despite
9 qualifying them as expert, I ruled that both Mr. Winer
10 and Mr. Delstin (ph) were not qualified to provide
11 opinion evidence regarding the interpretation or
12 application of the laws of Canada or Ontario. Indeed
13 they both acknowledged that they were not experts in
14 Canadian banking practices and have no experience with
15 the Canadian regulatory regime.

16 A That's not an accurate characterization of
17 my testimony or my experience. It's correct that I
18 would have told the judge if asked, and I don't
19 recollect the details, that I was not qualified to
20 practice law in Canada. I'm qualified to practice law
21 in the United States. I'm not qualified to practice
22 law in Canada, but I've been consulted by the Canadian
23 government about the application of its money
24 laundering laws and was prior to 9/11.

25 Q And here you're not qualified to practice

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1 law in Saudi Arabia as you say, but do you consider
2 yourself an expert in Saudi banking regulations to
3 assess a bank's compliance with the regulations of its
4 local regulator as a matter of Saudi law?

5 A It depends. If you're talking about the
6 English language, side-by-side version English
7 language, Arabic language purporting to be the same of
8 the 1995 circular which is based on FATF standards
9 based on review of evidence, one can determine whether
10 actions were taken that are set forth in that
11 regulation or not.

12 And I feel completely competent to do that
13 based on the review that I've undertaken and I
14 undertook that review. And the plain English meaning
15 of the words is I think quite clear particularly in the
16 context of FATF recommendations and international
17 standards.

18 So you look at the plain meaning of the
19 words. That's what comparative law is all about. And
20 here I'm not providing my opinion to a Saudi court or
21 to the Saudi government. And the case you cited,
22 ma'am, was in Canada. It was about Canadian law in
23 Canada. He's not a Canadian lawyer. I'm not making
24 representations here about Saudi law to a Saudi court.

25 Q But you are making --

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1 A I'm an American specialist as an American
2 specialist and expert in comparative banking law to an
3 American court about the plain meaning of the terms of
4 the regulations issued by the Saudi Arabian monetary
5 authority in 1995 and I feel qualified to do that.

6 Q Do you feel qualified to state whether a
7 Saudi bank has somehow violated a rule of Saudi law?

8 A In terms of the law as written and in
9 English, again, some of the English and the Arabic are
10 the same as is represented from the circulars. Yes,
11 Saudi regulation, yes, depending on the facts. It's a
12 contextual issue. It depends in part on how gross it
13 is, how clear it is. You look at the facts. You apply
14 the law. That's what comparative legal experts do
15 based on their knowledge of the whole international
16 banking system which I spent decades working in.

17 Q But, again, this would be your subjective
18 view of those laws, not your views as an auditor of the
19 Saudi bank or a lawyer determining the bank's
20 compliance with its own local laws of its regulator?

21 A I am not advising -- in connection with my
22 expert report, I'm not advising the Saudi bank on what
23 to do about compliance. I could do that if asked with
24 a forensic auditor and with a Saudi lawyer, but this is
25 for a different purpose. This is looking at what the

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1 SAMA regulations were in 1995, their relationship to
2 the 40 recommendations as set forth in my report and my
3 examination of the evidence from the bank what it
4 actually did. And I've done that in this report, laid
5 it out in great -- at great depth and length and I'm
6 comfortable with the assessments that I made.

7 Q And because you're not an auditor, you
8 don't really know how common the types of issues you
9 identify in your report were among Saudi banks at that
10 time?

11 A I have heard this particular line of
12 approach before in other cases and this was made I
13 think in the Arab bank case that I was an expert in
14 about what's common practice amongst banks and what's
15 the standard of compliance. And I think that's what
16 you're asking me about as near as I can tell.

17 And in that area, the position that I've
18 taken in the past and I think is the right one is
19 unless you are -- have examined a lot of banks in a
20 particular jurisdiction, you're not in a position to
21 opine about common practice and I'm not sure that
22 common practice is the proper standard in any case.

23 In the case of the United States, many
24 major U.S. banks have faced fines sometimes in billion
25 dollars or more, very, very large fines for various

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1 kinds of money laundering failures. So you have to --
2 looking at the state of compliance in a particular
3 country is I think not the relevant test. It's up to a
4 court to decide.

5 But as I look at things, I compare what the
6 rules require and a financial institution did, not
7 referring to what some other financial institution
8 might have done. I look at what happened in a
9 particular case based on all the evidence available to
10 me. That's what I've tried to do here.

11 Q And, again, we're talking about the 1990s?

12 A We're taking -- the questions I was asked
13 and which I've -- the report covers is prior to
14 September 11th, 2001.

15 Q In section 9 of your report, around 9.31, I
16 believe -- let me just get there -- you talk about
17 reviewing the account opening documents for certain of
18 the charities that we're discussing.

19 A Yes.

20 Q And you note that in 9.32 that the
21 fields --

22 A What page are you on, please?

23 Q So this is page 146. And in paragraph
24 9.32, you noted that some of the fields in the account
25 opening forms were missing information; is that

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1 correct?

2 A Yes.

3 Q And do you recall from your review of these
4 documents that many of these documents were manually
5 filled out?

6 A I don't recollect when there was
7 handwritten and when there was typed. And I don't know
8 what the word manual means here as opposed to what
9 you're contrasting it with. You mean by computer or
10 electric?

11 Q That it was handwritten, you know,
12 handwritten forms filled out and not -- not entered on
13 a computer or otherwise.

14 A I looked at the English language versions
15 for most of this rather than the Arabic version. You
16 can show me a particular document and we could go
17 through it.

18 Q And do you -- do you know based on your
19 review of these documents what the standard would have
20 been in Saudi Arabia in the 1990s if you take on faith
21 for a moment that these were handwritten which I
22 represent to you they were what the standard of data
23 collection was in Saudi Arabia at this time?

24 A What I know is that the 9/11 commission and
25 the monograph on terrorist finance consistent with my

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1 understanding when I was a U.S. government official at
2 the State Department in the late 1990s, very late in my
3 tenure, was that Saudi Arabia was not enforcing its
4 anti-money laundering regulations which is one of the
5 reasons we sent teams to Saudi Arabia to try to put
6 pressure on them to shape up.

7 This was not just a problem in Saudi
8 Arabia, however. It was a problem in a number of
9 countries which is why I went to Israel, Lebanon,
10 Syria, Cyprus to talk about countries in the region to
11 address similar issues of especially noncompliance with
12 what we needed to be safe and to have international
13 money laundering standards be applied appropriately.

14 Another team, it didn't happen to be me,
15 went to Saudi Arabia on exactly the same issues. There
16 were special considerations that were given to the
17 outreach to what was called -- what were called the GCC
18 countries at the time.

19 Excuse me. I'm going to have to pause
20 because I have a pernicious cold that I've now had
21 since late November which rears up from time to time.
22 I'm going to need just one minute. Please take us off.

23 MS. ERB: Should we break for lunch?

24 THE WITNESS: No. I want to continue and
25 finish this sentence, please.

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1 THE VIDEOGRAPHER: Off the record at 12:57.

2 (Deposition recessed at 12:57 p.m.)

3 (Deposition resumed at 12:58 p.m.)

4 THE VIDEOGRAPHER: We are back on the
5 record at 12:58.

6 THE WITNESS: So the problem that was -- we
7 were perceived to have had prior to 9/11 and this is
8 1997, '98, '99 to be precise as possible was that the
9 anti-money laundering standards that the FATF had
10 agreed on had not been implemented in practice, in some
11 cases even de jure, but in a number of countries in
12 reality. And so we sent out teams and I led teams to a
13 number of different countries to put -- to press on and
14 make more of a priority for adherence to the anti-money
15 laundering laws.

16 So Saudi Arabia was not the only country
17 here that was not doing what it needed to do to enforce
18 the anti-money laundering regulations it had. Based on
19 what I've already said to you, I can't comment on what
20 common practice in Saudi Arabia actually was at that
21 time. I can only look at what the SAMA standards say
22 you're supposed to do or required to do and what they
23 were actually doing based on the incomplete documents
24 provided to me. That's what I did in this report.

25 BY MS. ERB:

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1 Q And did you identify in your report any
2 SAMA enforcement action against Al-Rajhi Bank with
3 respect to its noncompliance with Saudi -- excuse me --
4 with SAMA regulations?

5 A To the contrary, I identified in my report
6 statements by U.S. officials and agencies. Monograph
7 on terrorist finance has been particular as a good
8 example, but I think it's also the 9/11 report and it's
9 elsewhere I think in a joint assessment by the CIA and
10 FBI in 2004 that there had been nonenforcement of the
11 SAMA regulations by SAMA in Saudi Arabia and that that
12 was a problem. That's what I'd heard back when I was
13 at the State Department in the late 1990s which is why
14 we sent a team out.

15 Q And based on your -- the documents you
16 reviewed and your experience with the many countries
17 that apparently were not up to the U.S. standards with
18 respect to their money laundering laws, do you have any
19 reason to or any document to point to that the level of
20 information in the documents, account opening documents
21 you reviewed were not -- were unusual as compared to
22 the account opening documents in any other banks in
23 Saudi Arabia or other countries that you've listed?
24 You listed a number of them.

25 A I was not doing bank examinations in the

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1 late 1990s. I was dealing with entire jurisdictions
2 that were not meeting -- you made one statement that I
3 have to disagree with that's in your question as an
4 assumption. It's not about -- it was not about U.S.
5 standards. It was about the international standards
6 that had been put into place in 1996 which we needed as
7 a matter of national security. This was not just about
8 banking regulation. This was about national security.

9 I came into this field at the very, very
10 beginning before there were any international standards
11 on banking and there was a recognition you could create
12 both systemic risk and risk of serious financial crimes
13 of various natures if you didn't have an integrated,
14 harmonized international system.

15 The GCC in the time that I was at the State
16 Department was considered a black hole in this area for
17 compliance. It was just complete nonfeasance in
18 practice regardless of what the regulations were on
19 paper. Different countries had different levels of
20 regulations on paper.

21 Saudi as I mentioned had no terrorist
22 finance law to my understanding criminalizing it or
23 criminalizing money laundering. What it had was the
24 SAMA regulations as the only thing to provide guidance
25 and protection. And the perception was and this was

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1 true maybe reiterated years later after 9/11 that it
2 wasn't being enforced.

3 And the information that I saw was
4 consistent with SAMA nonenforcement which is to say
5 they weren't doing -- what they were doing was they
6 were doing account opening documents. We're going to
7 make sure we got the right person on as a signatory.
8 We're going to make sure we have the right person on as
9 a signatory, not much else.

10 And for small accounts, you know, a Joe
11 Dokes depositing the income from his small business,
12 it's not going to matter. Big clients, big amounts of
13 money, transnational activity, that matters.

14 Q To come back to what you saw in the
15 documents you reviewed, again, to be clear, you did not
16 see any indication of a violation of SAMA banking
17 regulation that SAMA notified the bank about that SAMA
18 was asking the bank about or taking enforcement action
19 against the bank?

20 A The records that I saw were consistent with
21 the finding of the 9/11 commission's staff report on
22 the monograph that there was no enforcement action
23 undertaken by SAMA. I don't know of any enforcement
24 action taken by SAMA against anyone prior to 9/11 in
25 connection with its policies. If there is any, I've

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1 never seen it.

2 Q So I think I would like to take a lunch
3 break here and I'll defer to you on how long you would
4 like for launch. I would like 30 minutes or -- but --

5 A It's -- then 30 minutes.

6 Q Is that enough time for you?

7 MR. CARTER: Thirty will do. Let's try not
8 to go too much longer.

9 THE VIDEOGRAPHER: We're off the record at
10 1:04.

11 (Recessed at 1:04 p.m. for lunch.)
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A F T E R N O O N S E S S I O N

(Reconvened at 1:42 p.m.)

THE VIDEOGRAPHER: We are back on the
record at 1:42.

BY MS. ERB:

Q Mr. Winer, are you familiar with the term
zivot?

A Yes.

Q Can you tell us what your understanding of
that term is?

A It's a -- one of the pillars of Islam.
It's the requirement that good Muslims contribute a
portion of their income or wealth to other Muslims for
a common or good cause.

Q And you would agree that a contribution of
zivot or fulfilling your zivot obligations is not a
suspicious activity or a suggestion of terrorist aims,
correct?

A Yes.

Q And you agree that one way to make -- to
fulfill your zivot obligations is to make donations to
charitable organizations?

A Yes.

Q And, sir, have you ever consulted the Koran
in any way?

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1 A I've read it.

2 Q You've read it. Okay. Are you familiar
3 with the verse 2-2271?

4 A Not by number. I couldn't tell you the
5 number of any part of the old testament or the new
6 testament either. I'd have to read the text, though
7 I've read all three.

8 Q I'm going to read you --

9 A Sure.

10 Q -- an English translation and if you feel
11 the need to pull that up, we can do so, but it's very
12 short. It says if you disclose your charity, it is
13 well, but if you conceal it and give it to the poor,
14 that is better for you.

15 A Yes, I'm aware of that.

16 Q You're aware of that. Okay. And against
17 that tenet, would you agree that charitable donations
18 including charitable donations to fulfill zivot
19 obligations are sometimes made without disclosing the
20 name of the donor?

21 MR. CARTER: Objection.

22 THE WITNESS: Yes, sometimes they are.

23 BY MS. ERB:

24 Q And do you agree that the donations where
25 the name of the donor may not be disclosed is not

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1 suspicious?

2 A Not in the absence of other facts. Other
3 facts might make it potentially suspicious. And I note
4 in the case of Sulaiman Al-Rajhi, he had a foundation
5 with his name in it. His charity had his name in it.

6 Q And does that mean that you think any
7 charitable donation that includes his name is
8 suspicious?

9 A No. I think that he traveled a nation that
10 includes his name is not anonymous unless there's been
11 an effort to make it anonymous.

12 Q Well, sir, if I may, there are -- there's a
13 charitable foundation that may make and manage
14 charitable contributions, but when an individual is
15 making a charitable contribution and they don't want to
16 disclose their name, are you saying that just because
17 he has a charitable foundation that manages his wealth
18 would -- if Bill Gates wants to make an anonymous
19 contribution, is that suspicious because he has a
20 charitable foundation?

21 MR. CARTER: Objection.

22 THE WITNESS: That's not -- that's not
23 actually what I said. I'm happy to take a minute to
24 try and separate out the different elements of it.
25 It's perfectly fine to make an anonymous donation. I'm

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1 not aware of any reason why an anonymous charitable
2 donation would in and of itself be a problem.

3 Very large donations of charity to a Dawah
4 organization which is operating in areas of conflict
5 might be the type of contributions that would be of
6 high risk for the reasons I go through at some length
7 in my report. A person who has set up a charitable
8 foundation or a committee under his name would not seem
9 to me to be a person who is seeking to keep his
10 contributions overall secret.

11 Documents would suggest as I've seen in
12 this case an individual wanting secrecy in part because
13 of public revelations of his -- the charity under his
14 name and related -- related entities being linked to
15 terrorist finance, that would raise some questions for
16 me as I articulate in the report.

17 BY MS. ERB:

18 Q And, sir, if -- we may want to go and look
19 at one of those in a moment, but the general principle
20 that somebody of immense wealth that may have a
21 charitable foundation and that is fulfilling his
22 individual's zivot obligations through a donation, if
23 that donation is made anonymously, do you agree that in
24 and of itself that is not suspicious conduct?

25 MR. CARTER: Objection to form.

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1 THE WITNESS: It depends on the context.
2 For example, if you're making it at home locally in
3 your country to a local organization that's nearby to a
4 local person, if you're dropping off a turkey for
5 somebody for Christmas dinner locally, an anonymous
6 contribution might be absolutely normal.

7 If you're moving money all around the world
8 to a bunch of Dawah organizations that are in conflict
9 zones as the entities that you referred to earlier as
10 charities and as I refer to as Dawah organizations in
11 my report are engaged in a wide range of activities and
12 there's public press on them which there was and you're
13 making an anonymous contribution and there's references
14 to this being made in part and structuring being made
15 in part to keep it anonymous because of associations
16 with terrorism, that's a different story. And that's
17 the story that I saw in this case and it suggests a
18 motive other than the motive articulated in the saura
19 (ph) that you quoted.

20 BY MS. ERB:

21 Q And when you have charitable organizations
22 that are operating in conflict zones, you agree that
23 the activities that those charitable organizations are
24 engaging in may be legitimate?

25 A They have been in the case of these

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1 charities a mixture of legitimate and illegitimate.
2 The illegitimate activities I've described in various
3 expert reports as well as the legitimate activities.
4 When I was in the United States government, one of the
5 barriers or concerns the United States government had
6 about talking publicly about the risks of the charities
7 and doing more about the -- in response to the
8 charities was because they were doing some humanitarian
9 activity in some countries, substantial humanitarian in
10 conflict zones.

11 And they were intermingled with a wrongful
12 activity where you don't really want to be in a
13 situation of preventing a charity from engaging in
14 humanitarian activity which is why for a charity like
15 that to function and function well, you need to have
16 really good governance and really good due diligence to
17 prevent the risk of diversion and harm coming from the
18 charity doing the wrong thing like working with
19 Al-Qaeda and bin Laden notoriously as the state
20 supported charity, al-Heramain, did according to the
21 words of the Saudi Arabian government.

22 Q In 2004?

23 A The Saudis -- Saudis said over a period of
24 time different phrases initially about the Al-Jabbaar,
25 about the branches, but ultimately about the entire

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1 organization later. And so the need for due diligence
2 and for really careful recordkeeping and accounting and
3 auditing becomes just tremendously important in order
4 to know that they're clean.

5 So if you're involved in giving to
6 charities, you want to know what their financial large
7 amounts. You want to know what their financial
8 statements are, what they're doing, where they're doing
9 it to make sure that your charitable contributions are
10 going for things that are good, not things that are
11 potentially dangerous.

12 Q And is it your testimony that in the 1990s,
13 that level of diligence on charitable donations was the
14 norm and that international regulations would expect
15 that and that Saudi regulations would expect that?

16 A The Saudi regulations we can certainly get
17 into. They were not adhered to when it came to these
18 charities in my opinion. And I've articulated in the
19 expert report why I came to that opinion and what the
20 basis for it was. I'm less interested as I said to you
21 before in what some undefined set of international
22 norms are supposed to be of actual practice.

23 The question is what are you actually doing
24 and what harm is it causing, what's the risk. This
25 goes to the whole point of the anti-money laundering

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1 programs which is that they're risk based. They're not
2 list base. They're risk based. And there was great
3 risk here with these charities. The risk was fulfilled
4 and practiced by what they wound up doing and,
5 therefore, due diligence was required in order to
6 ensure that you weren't contributing to terrorism.

7 Now, the CIA lays out in its various
8 reports what it found the Al-Rajhi family was doing and
9 what it found ARB was doing, a conduit for terrorist
10 finance. What I found when I looked at the ARB
11 documents, there was no due diligence by ARB. And what
12 I found when it came to Sulaiman Al-Rajhi or SAAR, the
13 founder of the SAAR Foundation, is an effort to make
14 things going through the United States anonymous tied
15 to wanting to address the fact that there have been
16 allegations or terrorist finance.

17 And there's a document that says that, but
18 it's also reported separately by conversations that the
19 SAAR Foundation head in the United States, [REDACTED],
20 with IRS officers as articulated in the Kane
21 affidavits.

22 Q And just to be clear, there was no action
23 ever taken with respect to [REDACTED] in the United
24 States, no destination or prosecution to your
25 awareness?

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1 A To the best of my knowledge, he was not
2 designated. Al-Heramain U.S. was eventually
3 designated. It was controversial because it's a U.S.
4 entity for the same reason the Hoyland (ph) Foundation
5 was controversial because it was a U.S. entity because
6 designations had historically been almost entirely of
7 foreigners because the underlying authority of the
8 International Emergency Economic Powers Act is based on
9 foreign threats and foreign national sec -- economic
10 national security threats.

11 So if you look at the whole history of U.S.
12 sanctions, it's directed at threats from outside which
13 makes it particularly inapplicable in general to
14 threats from inside which was among the points the
15 court made I believe ultimately in the Oregon
16 al-Heramain case which is this question of the extent
17 to which various criminal processes of due process are
18 required if it's a domestic target as opposed to a
19 foreign target under IEEPA authorities which have
20 different standards.

21 And [REDACTED] was not designated. You're
22 correct. And the best of my knowledge, he wasn't
23 indicted either. That's a criminal standard. In my
24 report, I articulate part of the reason and I don't
25 know for sure of the various elements of the decisions

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1 made on Green Quest.

2 But one of the reasons it would have been
3 hard to go ahead and prosecute and those reasons are
4 essentially records were international. The records
5 weren't all located in the United States. There were
6 records located in the Isle of Man, a bank secrecy
7 haven that I complained to about the British government
8 in the 1990s personally and in Saudi Arabia. So you
9 would have to know on the inside what the reasons were,
10 but those are among the possible reasons why there was
11 no action taken given the evidence that existed.

12 Q And in your -- in your review of the
13 documents, you have not seen any charitable donation by
14 the bank, by Sulaiman Al-Rajhi that you identify as
15 being intend -- where the documents show that the
16 beneficiary of that donation was a terrorist or was
17 being used for terrorist aims, correct?

18 A Charities -- yes, correct. Charities are
19 not allowed to give money for that kind of purpose.
20 It's outside what charities are allowed to do. It
21 would be an immediate violation of the terms of the AHM
22 charity to write that down. I've never seen a charity
23 anywhere or a bank anywhere with two partial
24 exceptions, one which is Al-Rajhi, the other which is
25 Arab Bank, ever make a reference to providing support

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1 for terrorist. I haven't seen it over decades in this
2 field.

3 The reference I'm talking about here are
4 payments to martyrs which are in terms referenced I
5 think in 9/11 commission report if my memory is
6 accurate, but payments for martyrs for Hamas which as
7 far as I'm concerned is terrorist finance. Hamas was
8 engaging in terrorist activity.

9 Q So -- and the SAAR Foundation in the United
10 States and the SAAR Charitable Foundation in the
11 kingdom of Saudi Arabia were never designated, right?

12 A The kingdom of Saudi Arabia?

13 Q No. The SAAR Charitable Foundation that
14 was -- that is founded in Saudi Arabia, that was never
15 designated and the SAAR Foundation in the United States
16 that was the subject of the Kane affidavit was never
17 designated?

18 A That's correct to the best of my knowledge.

19 Q And you agree coming back to where we
20 started on charitable contributions that charities
21 operating in war zones are engaging in legitimate
22 conduct and that charitable donations to charities
23 operating in conflict zones would be one way for
24 Muslims to fulfill their zivot obligations?

25 A Yes, though the statement is incomplete.

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1 It's true so far as it goes. It's incomplete because
2 it does not address the risk of improper uses which I
3 believe is incumbent on someone to pay attention to if
4 they're directing a charity or making large payments.
5 And indeed it's not just my opinion there. The --
6 there are particular requirements that SAMA made both
7 for organ -- large organizations be handled by a bank
8 and for accounts generally.

9 And here it gets a little complex because
10 you have Sulaiman Al-Rajhi as head of the bank,
11 co-founder of the bank and head of the bank. And you
12 have him as head of the SAAR Foundation whether you're
13 talking about the SAAR committee, the SAAR Charitable
14 Foundation in Saudi, those two different things, one of
15 which was incorporated, the other which I don't know
16 what it was and the one in the United States.

17 So you're having these multiple roles
18 simultaneously and you have people at the foundation
19 who are also -- at the SAAR Foundation who are also
20 working for the al-Heramain Foundation for the head of
21 the bank. So given the complex set of relationships,
22 you would want due diligence to be done somewhere and
23 as near as I can tell, it wasn't done.

24 Q And for charities in Saudi Arabia that were
25 headquartered in Saudi Arabia that may have had

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1 branches overseas, do you know when the law came into
2 effect that restricted transfers from the Saudi
3 headquarters to projects or branches overseas?

4 A It was discussed in 2003 and 2004. In
5 2004, the United States government was still saying
6 they didn't think -- even later that it couldn't tell
7 when that was actually being put into place. And
8 there's some evidence in the record about al-Heramain
9 being shut down and then popping up again until it was
10 completely eradicated as a charity.

11 And eventually the central control was
12 undertaken by Saudi Arabia well after 9/11 precisely
13 because of the problems that I've just talked through
14 which is they need to control the mass -- the uses of
15 the massive flows of humanitarian aid going through the
16 Dawah organizations from Saudi Arabia internationally
17 which had led to the notorious use of al-Heramain on
18 behalf of Al-Qaeda and bin Laden himself in the Saudi
19 government's words even as al-Heramain was receiving
20 support from the Saudi government.

21 And I believe there's individuals in
22 documents I saw who were simultaneously working for
23 al-Heramain and for the Ministry of Islamic Affairs,
24 Islamic and Dawah affairs. So it was a simultaneous
25 role which makes all of this for me as someone who is

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1 not wanting to see states sponsoring terrorism or state
2 sponsored charities or supported charities sponsoring
3 terrorism or facilitating terrorism. It's all very
4 troubling. And here you have so many different roles
5 for Sheikh Abdullah at the same time that it becomes
6 particularly problematic because the lack of due
7 diligence looks like a matter of policy.

8 Q And would you like to correct your record
9 there? I think you mean -- I don't think you meant to
10 refer to -- I don't know who you mean by Sheikh
11 Abdullah. I don't know what you mean by that.

12 A I'm sorry. Sheikh Sulaiman Abdullah --
13 Sulaiman Abdulaziz Al-Rajhi. Forgive me. That was a
14 misstatement. I did not mean the current chair. I
15 meant SAAR which is why it's a little easier for me to
16 use that term than the Abdulaziz.

17 Q So do you disagree that prior to 2003 or
18 maybe 2004 there was no legal prohibition in Saudi
19 Arabia on charities making financial transfers
20 overseas?

21 A Yes.

22 Q And do you agree that the funds that were
23 donated to charities operating overseas whether for
24 humanitarian purposes or as you suggest some may have
25 been diverted, do you -- do you agree that those funds

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1 that a donor would not know if making a contribution to
2 that charity what the end use was?

3 A No, I don't agree with that.

4 Q So explain.

5 A Sure. Look at the Kosovo establishment of
6 the Saudi joint relief effort in Kosovo. There you
7 have Sulaiman Abdulaziz Al-Rajhi directly involved in
8 pushing for the establishment of that operation which
9 winds up being involved according to various other
10 documentation in terrorist finance over time and which
11 was opening up in a conflict zone, in a very active
12 conflict zone.

13 It seems to me that if you're opening up a
14 charity in a conflict zone, there's some obligation
15 there to do some due diligence or put some controls in
16 place. It's not just making a donation. It's making a
17 donation for a specific purpose and a specific location
18 just like the donations that were being made to Hamas,
19 to martyrs who were engaged in the second dobara. The
20 second dobara was being pushed by Hamas and Egyptian
21 Islamic Jihad.

22 Q Now, I mean, I'm --

23 A So I'm trying -- I am trying to answer your
24 question as best I can. So if you're talking about a
25 small individual donation by somebody putting their

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1 money in an ahm's bucket established at the local level
2 in Saudi Arabia, they're not -- it's not reasonable to
3 expect them to do very much due diligence.

4 When I was growing up in Boston, people
5 used to do those kinds of donations in bars, in Irish
6 bars, and eventually United States government basically
7 cracked down on it and stopped it because some of that
8 money was going to the IRA. This is back in the 1970s
9 and so that was a problem.

10 The question becomes what the role of the
11 donor is, what the donor's level of knowledge is. Now,
12 SAAR, Sheikh Sulaiman -- Sulaiman -- Sulaiman Abdulaziz
13 Al-Rajhi had a staff of about 20 people according to
14 the material that I reviewed for his charitable
15 committee and had close relationships with senior
16 officials at Muslim World League and the IIRO and I
17 think WAMY and, therefore, was not in a position of
18 somebody on the street doing a small donation to a
19 donation box.

20 And yet there's no due diligence anywhere
21 that I could see and no controls anywhere I could see
22 during the audits that I've been able to review
23 relating to any of this. So you put all of that
24 together with the patterns of giving and I think it's
25 highly problematic.

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1 Q So to be clear, the bank is the party in
2 the litigation here, so I don't think the -- the lack
3 of audits relating to the other entities is relevant
4 here, but let me --

5 A I do and I'm happy to tell you why if you'd
6 like me to answer that or respond to that which is the
7 ARB's own rules require you to have financial
8 statements of your customers and to update your
9 documents every three years. And I haven't seen any of
10 those existed for the Dawah organizations --

11 Q And do you agree that the --

12 A -- at ARB.

13 Q Do you agree that the -- that al-Heramain
14 was one of the largest and most prominent Saudi
15 charities at the time in the nineties?

16 A Yes.

17 Q And do you agree that it was endorsed or
18 that it was -- that it was known that many Saudis would
19 be donating to -- whether they're billionaires or as
20 you say individuals of more modest means would be
21 making donations to al-Heramain in the nineties?

22 A Yes.

23 Q You reference in your report the term
24 Wahhabism?

25 A Yes.

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1 Q Can you tell us what your understanding is
2 of Wahhabism?

3 A Sure. Late 17th century founder of
4 Wahhabism basically created a creed or an
5 interpretation of Islam which went back to seventh
6 century values founded on monotheistic values and
7 rejecting a broadening beyond monotheism and being very
8 focused on the monotheistic element of Muslim -- Muslim
9 doctrine and going back as much as possible to the
10 original text and the original words of the prophet
11 Muhammad and there's an interplay between the
12 development of Salafism out of Egypt and Wahhabism in
13 Saudi Arabia, but that's the core of it for the
14 purposes of political Islam.

15 Q And have you -- have you studied --
16 formally have you studied Islam?

17 A I've studied Islam like I've studied
18 Christianity and studied Judaism which is to say in
19 each case, I studied the religions in connection with
20 humanist -- humanist courses in college. I've done
21 reading since. I am not a theological scholar who
22 focuses on and has expertise on doctrinal disputes on
23 the various sectoral differences between different
24 interpretations of Christianity, Islam or Judaism.

25 That's not how I spent my time. I have

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1 spent my time on political Islam and the political
2 expression of what Steve Simon and Dan Benjamin refer
3 to as sacred terror which is to say extremism and
4 terrorism in the name of a religion as is -- as is
5 played out in the Middle East and in other areas where
6 Muslims live.

7 Q And when -- you use again extremism and
8 terrorism. We had a brief conversation about this
9 earlier today. When you use those two terms, are you
10 using those interchangeably?

11 A Not exactly. They can be close. It really
12 depends on context in the situation. Extremist
13 language can lead to terrorist activity. It can lead
14 to indoctrination when you refer to people of other
15 faiths as monkeys and pigs, for example. That's part
16 of a conditioning of a climate of hatred and I have
17 referred to that in other reports I've written and
18 other elements of this matter in connection with the
19 charities.

20 And I have looked at extensive materials
21 involving one of the charities that you have mentioned
22 which includes literature that is very disturbing in
23 terms of its extremism in priming somebody who would
24 then potentially engage in conflict on behalf of his
25 religion on an understanding that they were opposing --

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1 that there was a central conflict between Christianity
2 and the west and the Middle East, in particular the
3 historically Arab territories, but anywhere Muslims
4 lived.

5 And that of course in turn mutated into
6 what Al-Qaeda was pushing and bin Laden was pushing
7 which was holy war against the west and against the
8 United States as it played out in the terrorist
9 incidents I mentioned earlier in this deposition.

10 Q And when you are speaking about
11 extremists -- I mean, in your report, you discuss this
12 evolution and time when there was a shift, right,
13 from -- in Al-Qaeda when Al-Qaeda turned. And can
14 you -- can you tell us when you think that shift
15 occurred because as you acknowledge in your report, the
16 United States was -- was supporting the mujahideen,
17 right? So what -- how do you -- how do you assess that
18 timeline?

19 A Yeah.

20 MR. CARTER: Objection to form.

21 THE WITNESS: I'll do the best I can
22 because it's quote a complex issue and any effort to
23 reduce it into a bite size lecture is going to miss
24 some of the elements of it, but I'll try and do the
25 best I can.

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1 In 1979, there was a rebellion, a
2 fundamentalist rebellion at the Grand Mosque in Saudi
3 Arabia. What I heard when I was a Congressional
4 staffer is that French commandos were brought in to
5 electrocute in the cellars, in the basements, in the
6 tunnels I should say of the Grand Mosque the people who
7 were attacking the Saudi royal family.

8 In the wake of that, the Saudi royal family
9 moved to a policy of trying to support Islamists,
10 Wahhabi, Salafi, violent Jihad initially in particular
11 in Afghanistan. And it was called the Afghan
12 resistance move. It was called the Afghan Jihad
13 movement. The people who came into -- through that
14 movement were often referred to as foreign fighters
15 because they weren't from Afghanistan.

16 And from 1980 or so to 1989 in its first
17 form and then there's a secondary form from '89 to '92,
18 the goal was to get the Soviet Union out of Afghanistan
19 and there were areas in which the United States was
20 aligned with. I only got -- began to focus on it in
21 1985 when I came to work for Senator Kerry as counsel
22 in the Senate Foreign Relations Committee and was
23 really exposed to the policy discussions in Washington
24 about it.

25 And it never made any sense to me to be

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1 giving fanatics military support. I was very concerned
2 about the risks of that as a personal and professional
3 matter from my early days on the senate -- as a senate
4 staffer in the 1980s.

5 In any case, that war more or less ended
6 with the removal of the Soviet Union forces in '89, but
7 it continued until about 1992 with a civil war which
8 ended and ultimately by 1996, the Taliban took over,
9 the most extreme form of Saudi -- I misspoke -- of
10 Islamic puritanical seventh century anti-female,
11 anti-western standards wound up emerging in the end
12 victorious by 1996.

13 What happened after Afghanistan is what I
14 call the ABC conflicts. I call them that because it's
15 a convenient way of remembering where they were which
16 is the same idea that was applied to Afghanistan was
17 then applied to Bosnia with massive amounts of money
18 being given to Izetbegovic and under his control and
19 Chechnya which was not really an Arab Muslim movement
20 initially or a puritanical movement, but it got
21 inmeshed with the idea of Islamic resistance or holy
22 war.

23 And that also was playing out at the same
24 time in Kashmir. It was playing out in a completely
25 different context of Israel, Palestine. There it was

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1 playing out in -- it played out in Kosovo which I
2 referred to a little while ago. And it kept moving
3 further into the west over the course of the 1960s.

4 And you saw that -- I misspoke with that.
5 1990s. And you see that playing out in the series of
6 terrorist attacks against the United States and the
7 west of which the most dramatic examples were the first
8 World Trade Center attack which was Egyptian
9 fundamentally and then the terrorist attack in
10 Mogadishu and then the Bojinka plot in the Philippines
11 and then the attack on the U.S. embassies.

12 I was at the State Department by then and
13 that was -- by then it was -- that was very, very clear
14 of a -- at its core bin Laden originated attack with
15 the help from a whole lot of other people including
16 al-Heramain in Kenya against two U.S. embassies. And
17 the secretary of state was completely distraught. I
18 was at the State Department in a senior staff meeting
19 with her right after those attacks and I had never seen
20 her upset at that kind of a level.

21 BY MS. ERB:

22 Q Was al-Heramain Kenya designated at that
23 time? I don't think so.

24 A It was kicked out, shut down by the Kenyans
25 and kicked out and then it sued -- it sued to come

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1 back. And so it was able to engage in law fare to
2 bring itself back in, but at that point, we weren't
3 designating charities.

4 The whole sanctions thing took a long time
5 to evolve. Back in the 1990s, for example, I was
6 pushing to have major criminal organizations included
7 as candidates for sanctioning and this did not happen.
8 It happened a decade later or more. It happened
9 actually in the first Obama term. So even more than
10 that.

11 And the reason it didn't happen is we're
12 still digesting and trying to manage the designation of
13 terrorist groups and those who are supporting
14 terrorists. We don't have the ability, time, appetite,
15 capacity yet to get to serious transnational organized
16 crime even though we're a member of the -- even though
17 we're negotiating convention on that and that's a
18 priority. So it's like one step at a time. There's
19 only so much capacity the U.S. government had in the
20 designation process.

21 Q Would you consider contributions or
22 donations made to resistance fighters in Afghanistan to
23 be of a different quality than contributions or dona --
24 for -- excuse me -- contributions to charities
25 supporting resistance fighters or other support for

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1 those resistance fighters to contributions directed at
2 terrorist activities?

3 MR. CARTER: Objection to form.

4 THE WITNESS: Possibly. I think you have
5 to look at the timing of the contributions, what was
6 going on at the Soviet's left or not, for example, what
7 was the timing. What's happening in the 1980s is
8 different from what's happening in the 1990s. That's
9 why I just went through that lengthy discussion of
10 timetables because I think you have to respect the
11 different periods of time as to what's going on.

12 But certainly what happened in Afghanistan
13 was very, very bad and that you had the emergence of
14 further -- ever more intolerant regimes in Afghanistan.
15 It was the result of the proliferation of a world view
16 that was basically consistent with Wahhabi, very
17 puritanical Wahhabi and Salafist views that you apply
18 seventh century doctrine which is set forth in the
19 Koran.

20 It would be like applying to me -- and I'm
21 not a -- I concede that I'm not a doctrinal expert in
22 any of the world's religions. But when I read the old
23 testament, there are all these particular commandments.
24 It's not ten. It's many more than ten, dozens upon
25 dozens. I wouldn't want to live in a society that was

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1 governed by them personally and our country isn't based
2 on that.

3 So when you get very puritanical notions
4 based on original text, if you're a regionalist or
5 textualist on any religion, you wind up with very
6 puritanical regimes in place which can be quite
7 problematic to the extent that they view everyone who
8 doesn't adhere to them as a heretic, as an unbeliever,
9 as a monkey or something worse because of the doctrinal
10 difference.

11 And in connection with my work in Libya,
12 and I can find my report to 2001, but my work in Libya
13 when the Islamic state was in Libya and we had to get
14 rid of the Islamic state in Libya, the doctrines that
15 they were espousing the Islamic state were very, very
16 similar. It had very similar implications to what bin
17 Laden was doing earlier which I see as outgross from
18 this idea of sacred terror of political Jihad.

19 BY MS. ERB:

20 Q And when you refer to Salafis or Wahhabis,
21 are you putting all strains of those different beliefs
22 in one or do you recognize different strains in
23 Wahhabism and different strains in Salafism?

24 A Well, the saying is that all Wahhabis are
25 Salafis, but not all Salafis are Wahhabis is the dictum

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1 that I've heard and read over the years. And for any
2 religion, you're going to have competing points of view
3 as to what's right. How many Protestant sects are
4 there? How many varieties even of Orthodox Catholicism
5 are there? There are different Orthodox churches.

6 So they're not all the same, but they can
7 come together and influence one another for good or for
8 bad. And the Manichean black and white Muslims are a
9 threat from the west and threaten Christianity and you
10 have to adhere to seventh century Islamic values that
11 was being promulgated out of Saudi Arabia in the
12 nineties was very troublesome to U.S. policymakers.

13 And we were deeply concerned about its
14 impact. And it was a problem and it played out in the
15 activities of the charities as well as the activities
16 of Al-Qaeda. And it's one of the reasons I believe
17 they intermingled.

18 Q Have you heard of the quietist strain of
19 Salafism?

20 A Yes.

21 Q What can you tell me about your knowledge
22 of their belief system?

23 A It's -- it's somewhat limited. I am not --

24 Q It's what?

25 A It is -- my knowledge is somewhat limited.

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1 I have not written on the topic. So I try to confine
2 myself largely to things I've studied and written about
3 at length, but generally speaking, it's a kind of
4 ascetic withdrawal from political life and acceptance,
5 kind of a mystical acceptance of things. And I would
6 call it a passive -- doing passive good or quietly
7 doing rather than being actively involved in political
8 events is how I would characterize quietism and my
9 understanding of it, but I'm not a scholar of quietism.

10 Q And I want to shift gears now to -- back to
11 this concept of designation and how that concept has
12 evolved. And you -- you agree that Al-Rajhi Bank was
13 never designated by the United States and has still
14 never been designated to this day?

15 A Absolutely correct.

16 Q And the United Nations hasn't designated
17 Al-Rajhi Bank to this day?

18 A You're correct. I agree with that.

19 Q And in your report, you mention -- you cite
20 the 2004 joint assessment of Saudi Arabian support to
21 terrorism. Do you recall that document?

22 A Yes.

23 Q So if you want to look in your report, it's
24 at paragraph 7.2.14.

25 A What page, please? Page 89?

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1 Q Page 89, correct. And this is where you
2 reference this 2004 joint assessment. Do you see that?

3 A Yes.

4 MS. ERB: If we can pull up and mark as an
5 exhibit tab 16.

6 (Winer Exhibit JW12 was marked for purposes
7 of identification.)

8 BY MS. ERB:

9 Q And if we can turn to page 20, and I
10 believe it should be page 20 of the PDF as well, but
11 let me know if -- yeah. And if we can look at the
12 paragraph --

13 MR. CARTER: Is there a way he -- you can
14 give him access to the documents so he can scroll? If
15 you're in Zoom link, you can open the chat. In the
16 chat, you can download. You just click on it and
17 just --

18 THE WITNESS: I don't see this paragraph
19 referenced on this page.

20 BY MS. ERB:

21 Q So we are -- I'm pointing you to the
22 paragraph that begins, in 2002 the FBI formed.

23 A Yes.

24 Q Okay. So the FBI formed the Saudi task
25 force to undertake a comprehensive review of all Saudi

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1 related matters.

2 A Um-hmm.

3 Q And shortly after the Saudi task force
4 began its work, the FBI's Washington field office
5 established a Middle East Arabia peninsula squad
6 dedicated to the Saudi target. The squad has since
7 initiated more than 100 investigations on individuals
8 and entities suspected of criminal intelligence related
9 and terrorism related activity. You see that?

10 A Yes.

11 Q Are you aware -- were you familiar with the
12 investigations that this unit was or squad was
13 conducting relating to Saudi Arabia?

14 A Only with -- I was not in government in
15 2002. The administration had changed and I was not in
16 the Bush administration. So I was aware of newspaper
17 reporting here and there on some of the work of Green
18 Quest which was prior to the restructuring of treasury
19 enforcement elements into homeland security and to the
20 establishment of this task force. And so I had limited
21 windows into what the task force was doing other than
22 as the government issued public reports.

23 Q Do you have any awareness as to whether the
24 task force may have investigated or looked into
25 Al-Rajhi Bank?

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1 A I'd have very little insight into that.
2 I'm aware of the representations made by Dennis Lormel
3 in his rebuttal reports regarding that.

4 Q And regardless of your awareness of any
5 specific investigation, would you agree that the
6 attacks on 9/11 are among the most investigated events
7 in U.S. history from an investigation standpoint?

8 A It's hard for me to evaluate that because
9 the FBI -- I mean, you could say as a matter of common
10 sense that that might be true, but do I know it? I
11 don't know it which is to say I know what the work was
12 of the 9/11 commission because they published a report
13 outlining the work and how they went about their work
14 and so on.

15 What the FBI did and didn't do, I see only
16 in shards and snatches based on the particular
17 materials that have been published. Probably one of
18 the best ones and it's very incomplete is the 2004
19 joint CIA/FBI assessment.

20 Q And would you agree that even if you can't
21 say it's the most investigated, would you agree that it
22 was a widely investigated event in U.S. history?

23 A In 2002, the United States devoted enormous
24 resources to try and understand what happened in 9/11
25 and to try to prevent another 9/11. And there were

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1 additional terrorist attacks that were prevented. The
2 focus in that period of time as near as I could tell as
3 an outsider who had some conversations with people who
4 were in the White House after I left the government and
5 some conversations with people at treasury, but not
6 anyone at the FBI or Justice Department, to the best of
7 my recollection, and not with anyone at the State
8 Department to the best of my recollection.

9 The focus was -- I may have had
10 conversations with State, but I did not with the FBI or
11 with Justice. My best recollection and understanding
12 was that the focus was pretty much on preventing
13 another 9/11. So you had the Shoe Bomber, for example.
14 You had -- what was his name? Reid was one of them and
15 Pedia (ph) was another. You had a couple of terrorist
16 attacks which were thwarted. So there was enormous
17 attention being given looking forward what can we do to
18 shut this down to prevent it from happening again.

19 The work that was being done on
20 reconstructing what had already happened was important,
21 but I don't know if it was given as much attention, as
22 comprehensive attention. I want to say I don't know.
23 I don't know as the work to prevent the next attack.
24 What I do know is that the United States focus on this
25 shifted in 2003 to the war on Iraq to some extent and

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1 that had an impact on continuing U.S. efforts to combat
2 global terrorism in some respects. So it's a
3 complicated picture, yeah, in practice.

4 Q And just as a side note since you mentioned
5 the war on Iraq, you're aware that the intelligence
6 that underpinned that war was also intelligence that
7 proved to be not very reliable, wasn't it?

8 A It was intelligence that was politicized.
9 It wasn't so much that the intelligence was unreliable.
10 It was that the intelligence was politicized which is a
11 different problem.

12 Q So do you think there was evidence that
13 there were weapons of mass destruction in Iraq and has
14 that been corroborated?

15 A I actually lectured at the CIA on this
16 issue. I gave courses having to do with this issue.
17 And what happened there is that there was evidence in
18 that case and the evidence came from very reliable
19 sourcing in that particular case, but it was because
20 people were lying to Saddam Hussein about keeping
21 programs afloat because of a vortex of corruption in
22 Iraq.

23 So as near as I could tell based on my
24 outside assessment and the lecturing that I was
25 undertaking for the Kent School to train CIA analysts

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1 in the OTS, the problem there wasn't that the
2 intelligence was wrong because the intelligence was
3 actually accurate. It was that interpreting it in
4 context didn't consider the corruption factor. And my
5 particular lectures were on the impact of corruption,
6 the impact of corruption in assessing intelligence.

7 Q So to underscore the importance of
8 corroboration?

9 A Having enough context and ensuring that
10 you're not politicizing information. And the
11 difference between the Iraq case and this case is I
12 have no reason to believe having looked at all that
13 information that the Al-Rajhi Bank was politicized at
14 all. If it was politicized, it was the other direction
15 because of the need to try and work with the Saudis on
16 the wide range of issues involving a wide range of
17 departments in this period of time to achieve current
18 and future U.S. security interests. And I'm happy to
19 go into that issue at some length because it's quite
20 important.

21 Q Well, I mean, the focus I'm -- I'm
22 addressing here is the lack of designation of Al-Rajhi
23 Bank following the dedication of enormous resources by
24 the United States, extensive investigations into 9/11
25 and still today Al-Rajhi has not been designated.

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1 A Yes, and for good reason. But it's not
2 because there wasn't enough evidence to do it. I've
3 been involved in designation processes and I have
4 pushed for the designation of people in certain cases
5 who in my opinion should have been designated and where
6 there was absolutely sufficient objective evidence well
7 beyond including evidence that they participated in
8 terrorist activity who are not designated for policy
9 reasons of various kinds, not one, but multiple
10 different kinds of policy reasons.

11 This is true in my most recent (inaudible)
12 as special envoy of Libya where I participated in the
13 designation process of people who had carried out
14 terrorist activity. I cannot be more specific. Please
15 let me complete the -- you made an assertion. I'm
16 trying to respond to the assertion.

17 The timing of the ARB designation process
18 is utterly critical in understanding what happened.
19 The CIA report is the end of May 2003. That's when it
20 comes out. They didn't write it over two weeks. That
21 would have taken time to go through the CIA system. It
22 clearly is a tasking from somebody almost certainly at
23 the NSA, all government kind of tasking to provide
24 options of what to deal with the current problem, not
25 the past problem of ARB, but the perceived current

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1 problem of ARB because sanctions are not about the
2 past. Sanctions are about the present and the future.

3 And when there is no longer a threat, the
4 sanctions are removed. They are there to deal with the
5 current threat. So in 2003, there's still perception
6 there's a current threat and what happens in 2003? In
7 May 2003, there's the Riyadh terrorist bombing and this
8 joint assessment among other documents says Saudi's
9 cooperation which has not been previously characterized
10 as particularly good. It's characterized as
11 oppositional, problematic is not the exact words, but
12 the gist of it is noncooperative. And there's some FBI
13 statements completely noncooperative.

14 The decision was made based on my reading
15 of all the evidence we're going to try and see how much
16 cooperation we can get to address to this particular
17 problem. And so they go to the Saudis, Juan Zarate who
18 I've known since -- since the beginning of the Bush
19 administration. And he writes about this in
20 treasury -- treasury wars. He knows what I'm talking
21 about. He was there and he's written about it very
22 clearly.

23 He goes to the Saudis and the Wiki --
24 WikiLeaks cables which read like U.S. government cables
25 which I believe to be genuine based on my reading and

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1 my other knowledge, described exactly what the U.S.
2 government is trying to do which is to go in depth a
3 bank examination with the Saudi government to the ARB.
4 So instead of sanctioning, they want to get more
5 information and address the current threat through a
6 different tool. And that's what they're trying to do.
7 They're trying to address the threat through a
8 different tool.

9 Now, if they use the tool of sanctions
10 against a country where there's a strategic
11 relationship that's important where there are military
12 bases, where there are a variety of other things going
13 on too big to fail, this is a huge bank, the collateral
14 damage to consumers, to depositors, to people who they
15 have loans to, to the correspondent banking system --
16 remember when I talked earlier about systemic risk to
17 the banking system internationally.

18 You close a bank like Al-Rajhi Bank down
19 like that with sanctions, you're affecting its
20 correspondent relations everywhere. You're creating
21 pools of money at banks all over the world related to
22 their correspondent accounts. You're affecting the
23 commercial activities of Saudi Arabia. That's going be
24 viewed by Saudi Arabia as an extremely hostile act.

25 And if you look at the history of U.S.

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1 sanctions against banks, it's done late and it's done
2 frequently. Who does the U.S. government sanction in
3 terms of when it sanctions banks, Iran where there's
4 essentially no commercial activity. It sanctions Iran
5 banks and this is later. It sanctions the Syrian
6 banks. It sanctions the North Korean Bank.

7 And it's very controversial in the U.S.
8 government just talking to people at the time and the
9 Treasury Department is they were doing it by how
10 controversial it was. North Korean Bank controversial
11 because of the interrelatedness of the banking system
12 and the collateral damage -- and the collateral risks. So
13 that's on the banking side. That's on the defense
14 side.

15 Now, for the State Department which has got
16 all these diplomatic things going on with the Saudis,
17 also quite problematic. So you have lots of
18 institutional equities that says particularly after the
19 Riyadh attacks when this is being considered let's take
20 a different path. And that's what I believe they did
21 and that's why I believe it. That's the context. The
22 timing is very important.

23 And the Saudis changed and they wind up
24 saying al-Haramain shot them down everywhere.
25 Notoriously tied to bin Laden and Al-Qaeda whereas when

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1 I was in the government, they were saying al-Heramain,
2 not a problem.

3 Q So to be clear and going back to where we
4 started, the transactions that you reviewed with
5 Al-Rajhi Bank at the time were with persons, charities,
6 individuals that were not designated or identified by
7 the United States or the United Nations as --

8 A Yes. I said --

9 Q -- as targets?

10 A Yes. I said list based versus risk based
11 and anti-money laundering policies and programs are
12 supposed to be risk based, not list based.

13 Q Your testimony now is that Al-Rajhi Bank --
14 you agree Al-Rajhi Bank was not designated, correct?

15 A Yes.

16 Q And if I understand your testimony, it's
17 that the United States would maybe -- you don't seem to
18 know this, but maybe would not designate Al-Rajhi Bank
19 even if it had aims against the United States because
20 of political equities?

21 A That's not what I said. What I said was
22 that sanctions are undertaken to address a current
23 threat and they're one of the tools that can be used
24 against a current threat because it's to protect the
25 national security of the United States and that after

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1 the Riyadh attacks, the attitude from the Saudi
2 government changed a lot as reported among other things
3 in the terrorist -- in the joint assessment. And as a
4 result of that, there was an effort instead to work
5 with the Saudi government.

6 And what the -- what that effort produced
7 as far as I'm concerned based on what I've seen is a
8 very changed approach which the Saudi government pulls
9 back on the charities, has them stop making the
10 contributions overseas without supervision. And you
11 see -- you don't see Al-Rajhi being used for terrorist
12 finance post 2004.

13 Maybe it's possible they were because I've
14 had limited insight into it because the discovery
15 period is 1998 to 2002. So I can't be sure what
16 happened in 2004 other than the official reports that
17 I've read given the limitations of the discovery
18 period.

19 Q And just to be clear, no individual member
20 of the Al-Rajhi family has been designated by the
21 United States or the United Nations?

22 A That's correct.

23 MR. CARTER: Can we -- I have to run to the
24 rest room. Can we can take a break?

25 MS. ERB: Yeah, we can take a break. Ten

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1 minutes?

2 MR. CARTER: Yeah. Five, ten minutes,
3 yeah.

4 THE VIDEOGRAPHER: Off the record at 2:40.
5 (Deposition recessed at 2:40 p.m.)

6 (Deposition resumed at 2:53 p.m.)

7 THE VIDEOGRAPHER: We're back on the record
8 at 2:53.

9 MS. ERB: If we could pull up, please, tab
10 100 and mark that as Exhibit 13, JW13.

11 (Winer Exhibit JW13 was marked for purposes
12 of identification.)

13 MS. ERB: Let's pull this one down because
14 this is not the correct document. Rather than go off
15 the record, Sean, I'll just shift gears and we'll come
16 back to this.

17 MR. CARTER: Sure.

18 BY MS. ERB:

19 Q Mr. Winer, in your report in a few
20 occasions, you state that there are redactions in the
21 documents produced by the bank that made it difficult
22 in certain circumstances for you to analyze the
23 information in those documents. Do you recall --

24 A Yes.

25 Q -- making those comments?

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1 A Yes.

2 Q And you submitted your report on
3 October 4th, 2023, correct?

4 A Yes.

5 Q Are you aware that Al-Rajhi Bank provided
6 fully unredacted versions of the bank's document
7 productions on August 11th, 2023?

8 A I'm not aware of what the date was. I knew
9 it was close to -- relatively close to as within a
10 couple of months of my report. So it does not -- your
11 date does not surprise me, but I don't have
12 confirmation of that. I don't know the date.

13 Q And do you recall receiving unredacted
14 translations of the documents that Al-Rajhi Bank
15 produced before you finalized your report?

16 A No.

17 Q And without disclosing any privileged or
18 confidential information as between your discussions
19 with counsel, do you recall ever asking for copies of
20 unredacted documents that you were having trouble
21 reviewing?

22 A I can't address that issue in the way you
23 formulated the question because if I had any such
24 discussions, it would have been I believe in a
25 privileged setting. So I have to leave it at that, I

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1 think.

2 Q Could you in the time that you had to
3 prepare your report between August 11th and
4 October 4th, could you have asked for pages or
5 documents that you were having difficulty reviewing
6 because of redactions?

7 A I did not know enough and do not know
8 enough about the discovery process in this case to know
9 when the judges made decisions on discovery in
10 relationship to such things as redacted documents. For
11 the most part, I had very little knowledge about the
12 processes between the parties relating to that.

13 I did become aware in -- very few days
14 before finalizing my report that the bank very late
15 consistent with the deadline, but I would characterize
16 it as very late produced unredacted versions of some
17 documents. I have no idea which ones. I don't know
18 and I don't have those.

19 MS. ERB: Are we okay with tab 100 now?

20 PATRICK: Yes. It's going to be tab 100
21 underscore 1999.

22 BAILY: I'm looking to make sure I had that
23 document. I didn't see it in my list currently.

24 PATRICK: I'm looking in the folder right
25 now and it's in there.

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1 BAILY: Give me one moment to check for it.
2 One moment, counsel. I'll put that up on the screen.

3 MS. ERB: Okay. So if we can scroll to I
4 believe the second page of the PDF to the translation.
5 BY MS. ERB:

6 Q This is -- in our prior conversation, sir,
7 you mentioned a charitable contribution to al-Heramain
8 relating to Kosovo.

9 Do you recall discussing that a moment ago?

10 A Yes.

11 MS. ERB: Okay. If we could make this
12 bigger because it's pretty far away from me.

13 MR. CARTER: I'm just going to lodge an
14 objection related to a point we raised yesterday that
15 the translation of this document includes an
16 inaccuracy.

17 MS. ERB: And I was going to correct that,
18 so that's fine.

19 MR. CARTER: Thanks.

20 MS. ERB: Can we make this bigger? I'm
21 sorry. I'm quite far from the monitor.

22 BY MS. ERB:

23 Q Okay. So to Sean's point, my understanding
24 is that there's a translation error on this document
25 and that the sum reflected is not 18,500 riyals, but

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1 rather than 187,000 riyals which is about 50,000 U.S.
2 dollars. So, sir, this is a document from the Saudi
3 based charity foundation of Sulaiman Al-Rajhi; is it
4 not?

5 A I don't -- can't tell from the document as
6 to whether it's in the foundation. It has Al-Rajhi
7 Banking and Investment Corporation's name at the
8 bottom.

9 Q That's a copy of the check actually.

10 A It says that it's from Abdullah -- Abdul --
11 Abdullah Al-Rajhi.

12 MR. CARTER: I don't think the whole
13 document is visible right now.

14 MS. ERB: Can we scroll down?

15 THE WITNESS: And it's to the director of
16 al-Heramain.

17 BY MS. ERB:

18 Q So the reference to Al-Rajhi Banking and
19 Investment Corp at the bottom there is a photocopy of a
20 check for the first PDF -- page 1 of the PDF -- excuse
21 me -- that may be more visible.

22 A I would like to actually stay with this for
23 a moment if we could.

24 Q Oh, sorry. Okay.

25 A Because at the very bottom which was not

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1 visible before, it's signed Sheikh Sulaiman Abdulaziz
2 Al-Rajhi. So it appears to be a check written by him
3 to al-Heramain's char -- to the al-Heramain Charitable
4 Foundation. Again, there are two different -- as you
5 just specified, there are two different amounts on the
6 check between the check and the amount on top.

7 Q And --

8 A I can't say on the basis of the document
9 that's in front of me that it was from the SAAR
10 Foundation. It shows that it's from SAAR.

11 Q Okay. SAAR as in signed by the individual?

12 A Sheikh Sulaiman Abdulaziz Al-Rajhi.

13 Q Let's go to the original on page 1 of the
14 PDF for a moment if we can, please. So this -- and I
15 recognize you don't read Arabic. I'm not asking you to
16 here, but looking at this document, do you see that the
17 bottom part of this document is a copy of a check?

18 A Yes.

19 Q Do you agree?

20 A Yes.

21 MS. ERB: And if we can go back now to the
22 English translation on page 2 of the PDF for the
23 technician.

24 BY MS. ERB:

25 Q And in -- this is a letter that is

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1 referencing another letter. Do you see that where it
2 says with reference to your kind letter?

3 A Yes.

4 Q And in this letter, it also references a
5 phone call and following the phone call with your
6 eminence. Do you see that?

7 A Yes.

8 Q And the date of this letter is in 1999. I
9 believe that may be April 5th, 1999. It's on the lower
10 left side of the translation. Do you see that?

11 A There -- there are two different dates that
12 are listed, one of which is 4/6 or 6/4 and one is 5/4
13 which I would read to be the check being April 5th,
14 1999, and the letter being April 6th, 1999.

15 Q I stand corrected. You're right. The date
16 at the top of the letter is April 6. The date of the
17 check is April 5, but the year is 1999, correct?

18 A That's my understanding, yes.

19 Q And this is a letter to Ageel, correct,
20 Al-Aqeel?

21 A Yes.

22 Q The top of the letter and it's being sent
23 to him in his capacity as director of the al-Heramain
24 Charitable Foundation, correct?

25 A Yes.

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1 Q And in 1999, Ageel was not designated by
2 the United States or the United Nations, correct?

3 A Correct.

4 Q And the al-Heramain Charitable Foundation
5 was not designated by the United States or the United
6 Nations, correct?

7 A That's correct.

8 Q And when you look at this letter and it's
9 referencing a letter from Ageel followed by a phone
10 call, do you know whether in that letter or -- and the
11 phone call that followed there were not discussions of
12 the purpose or use of this account for charitable
13 contributions, charitable purposes?

14 A I have no information on that from this
15 document.

16 Q So let's look at the letter where it's
17 relating to the paragraph beginning with reference
18 following the phone call with you, I am pleased to
19 attach a check in support of the relief program or
20 Muslims in Kosovo.

21 A Yes.

22 Q And he's suggesting in this letter that
23 they open an office in Macedonia and that we would
24 greatly appreciate it if you would provide us with a
25 copy of the report that you received so that we would

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1 be kept abreast of the situation of the Kosovo
2 refugees.

3 A Yes.

4 Q Is there anything in this letter on the
5 face of this letter that suggests that this
6 contribution was intended for terrorist purposes?

7 A No.

8 Q Thank you.

9 Mr. Winer, coming back to the quality of
10 intelligence and reporting. Am I correct that you've
11 been a proponent or endorser, if you will, of the
12 Steele dossier?

13 A I think that's a simplification and I think
14 that's a simplification. I wouldn't characterize it
15 that way, no.

16 Q How would you characterize it, sir?

17 A Sure. I came to work with Chris Steele in
18 the private sector after I left the State Department,
19 some years after I left the State Department before I
20 reentered the State Department. When I reentered the
21 State Department, soon after I reentered the State
22 Department in 2013, Mr. Steele said that he was
23 collecting information on Russia and Ukraine. Would
24 the State Department be interested?

25 I said this is not my current lane. I'm

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1 interested in Russia in connection with Russia's
2 activities in Iraq and Libya, but not other than that
3 particularly. But I'm happy to share it with Victoria
4 Nuland who was the assistant secretary of state for
5 European affairs and see if she's interested in
6 receiving the material or not. I gave her three
7 reports that he provided and she said this is very --
8 this is useful, highly useful information. I am
9 interested in receiving these reports.

10 Over the next couple of years, I provided
11 somewhere between a hundred and 120 reports. I don't
12 remember the exact number, but it was more than a
13 hundred to her from him. On at least two occasions
14 after the initial request that I do this, I said do you
15 still want me to do these. I had a lot of other things
16 to do. It was -- required extra time from me to act as
17 the intermediary here and she said, yes, please
18 continue it.

19 So I provided those reports to her which
20 she said were valuable and helpful to her and which she
21 shared with others in the department and occasionally
22 told me to share with others working for her. And she
23 said she found them again useful and largely correct is
24 my memory of it.

25 In September of 2016, he came to me with a

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1 report which for the first time related to domestic --
2 a domestic political person. In this case, Donald
3 Trump and his campaign and said that he had this
4 troubling information about Russian efforts to
5 influence the U.S. elections and did I want to give it
6 to the State Department or provide the information. I
7 did not get -- retain a copy of the dossier. I was
8 shown the dossier as -- in its state as it was in
9 September.

10 I informed Victoria Nuland about the
11 existence of this document and I said do you want to
12 receive the document or not. She said get me the
13 information. I gave her a two-page distillation of
14 core elements of it and she told me and I agreed with
15 her that it was important that the information be
16 provided to the FBI, that we were in no position to
17 assess it, that the FBI should assess it and she would
18 arrange for that. It was my understanding that she
19 then arranged for that and the information was
20 communicated directly to the FBI.

21 Q Did you ever take a view on the credibility
22 of the Steele report and the intelligence?

23 A In part only and in part not. The view
24 that I took was that I had been told by the most
25 knowledgeable person in the Department of State, a

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1 person who read information on Russian intelligence on
2 a daily basis that the reports were -- that I provided
3 to her from him over the previous couple of years which
4 had nothing to do with the American politics had been
5 very -- had been highly useful to her.

6 And when I had asked her a couple of times
7 if she wanted me to continue or to stop, she had
8 encouraged me to continue them. I also asked her if
9 she wanted me to provide her the substance of what was
10 in the Steele dossier in the short version I had to
11 assist her in evaluating it and she said what she said
12 to the FBI.

13 My assessment as I wrote in the Washington
14 Post is that I had no basis for discounting it. Some
15 of the information in it was information which was
16 consistent with what I'd seen elsewhere and other
17 information I was in no position to evaluate but needed
18 to be evaluated. And that was essentially what I said
19 about the Steele dossier.

20 Q Did you ever make any attempt to the
21 corroborate any points in the Steele dossier before --

22 A Only the ones --

23 Q -- going public with it?

24 A I didn't go public with it.

25 Q Well, going public with your views on it in

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1 the Washington Post.

2 A I was -- I was being pushed by an effort by
3 a series of attacks on me by people associated with
4 then President Trump and I was about to be -- I was
5 told that I was going to be subpoenaed by the house
6 intelligence committee, Devin Nunes who later went to
7 work for Trump Social, I think, Mr. Trump's social
8 media company.

9 And so I was intimately involved with the
10 president and his -- the then president and his inner
11 circle and that they were going after me. I was told
12 essentially I was going to be lit up, gone after, et
13 cetera, et cetera. So I made the decision on my own to
14 publish an op-ed saying Devin Nunes is going after me.
15 Here's what happened. And I reported -- wrote in the
16 Washington Post the opinion piece which they put the
17 title on Devin Nunes is investigating me here at the
18 truth which I described what happened and said it
19 needed to be reviewed carefully.

20 Q And did you -- let's be clear. There
21 are -- there are assertions in the Steele dossier that
22 are quite solacious in their content, right? And did
23 you find that Christopher Steele was somebody you could
24 trust, rely on as a source of intelligence?

25 MR. CARTER: Objection.

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1 THE WITNESS: I have used him as an
2 attorney on behalf of a variety of clients between 2017
3 and 2022 in which information provided ahead of events
4 was borne out by events. I can't tell you who the
5 clients are, but I am happy to provide you an example.

6 In the summer of 2021, he provided me
7 information that various oligarchs were moving their
8 assets out of Cyprus where they've been headquartered
9 into Kaliningrad which is a free zone that's opaque.
10 It's completely opaque. They don't disclose beneficial
11 ownership at all.

12 And the assessment associated with the
13 intelligence, that was the raw intelligence and the
14 facts which are proven by business records to be
15 accurate based on business records, the assessment is
16 it looks to me like they've all gotten the word get out
17 of the west in essence. That wasn't in the formal
18 intelligence report. That was a conversation about it
19 rather than something in the actual report.

20 Of course what happened over the fall of
21 late 2021 is the Ukraine situation intensified and the
22 invasion took place a few months later consistent with
23 the information that had been provided to me earlier.
24 The information that I had -- I have received from him
25 on behalf of clients over the years has generally

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1 speaking been very good and has been reliably good, but
2 it's raw intelligence. It's -- it has its limits which
3 is why in some cases I have asked for and gotten
4 business -- business records in addition as I would
5 hope that any government agency working with material
6 from an outside source would then try to do to go
7 further with it.

8 In the case of the Steele dossier, the
9 essence of my op-ed, the opinion piece, the absolute
10 essence was this needed to be looked at. You can't be
11 someone who receives information about a foreign
12 government's efforts to interfere with U.S. elections
13 and do nothing. That would be reckless, irresponsible
14 and wrong.

15 BY MS. ERB:

16 Q And today you're aware that the
17 intelligence in this Steele dossier has been questioned
18 and criticized?

19 A Of course it's been questioned and
20 criticized. It was very threatening to and damaging to
21 Donald Trump. Donald Trump, people in his party
22 associated with him, the MAGA wing of the Republican
23 party, right wing media that is not reliable at all
24 have all taken the same view as did John Durham in
25 going after various people associated with Mr. Steele

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1 and those prosecutions of course failed.

2 So sure it got politicized and it got
3 heavily politicized because of its partisan nature, but
4 my role was to fulfill an obligation to make sure that
5 that information got properly evaluated.

6 Q And today do you have a view on the
7 reliability of the information or data points contained
8 in the Steele dossier?

9 A Only a partial view.

10 Q What is that partial view?

11 A Elements of it have been corroborated.
12 Elements -- other elements have not been corroborated.
13 In a couple of cases that I'm aware of, one that I can
14 think of in particular, there's an error and the error
15 goes to he -- one of his sources referred to a
16 consulate, Russian consulate being in Miami, Florida.
17 It wasn't in Miami, Florida. It was in St. Petersburg,
18 Florida, not Miami.

19 And the consulate, honorary consulate for
20 St. Petersburg had a relationship with the city of St.
21 Petersburg at the time that Putin was in St. Petersburg
22 and there were old Putin ties between the honorary
23 consul and the city of St. Petersburg and Putin. So
24 that was what was in back of that.

25 I know that that is -- and that's the kind

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1 of mistake that one will see in an intelligence report.
2 It's not a fundamental error, but it's there. There
3 was another one, the second one I can think of which is
4 that there was a report of a meeting that one of the
5 sources had between Carter Paige and Igor Sechin who
6 was a -- at various times been a highly ranked Russian
7 official or a highly ranked Russian oligarch of state
8 enterprises and it wasn't with Sechin. It was with a
9 deputy of Sechin. And that may have been puffing on
10 Carter Paige's part. I don't know the basis.

11 But when I was interviewed by the senate
12 intelligence committee on these issues, I told them I
13 did not know the sources and was in no position to try
14 and find the sources. In the period of time I was in
15 the government, my work at that time was of tremendous
16 intensity on Libya. I was trying to keep the Libya
17 peace process from falling apart in getting the Libyan
18 factions together to promote a unified security force
19 and to get a unified economic bank and oil activity.
20 And almost all of my time in work was spent on that. I
21 didn't have time for much else.

22 Q And the Steele dossier contains very
23 graphic and solacious allegations about Donald Trump's
24 activities with prostitutes in Moscow. Do you know
25 whether such extraordinary allegations were ever

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1 corroborated and did you ever make any attempt to
2 corroborate those types of stories before taking the
3 positions you've taken with respect to the Steele
4 report -- excuse me -- the Steele dossier?

5 MR. CARTER: Objection.

6 THE WITNESS: The position that I took was
7 that it needed to be investigated by agencies in the
8 position to investigate it. That was the position that
9 I took. And then I was not aware of proofs of major
10 errors. I know that Jane Mayer and the New Yorker
11 wrote an article which described a similar incident,
12 not identical, but similar in a Las Vegas hotel that
13 took place involving the people -- some of the same
14 people who were involved in the hotel that Trump was
15 said to be at in connection with the solacious
16 activities in Moscow.

17 The same cast of characters in Vegas and
18 that that Vegas hotel club was shut down for having
19 allowed sexually improper activities of the kind
20 described in the dossier to take place. And in the
21 Jane Mayer story -- and I know Jane quite well. I went
22 to school with her. So I've known her for almost half
23 a century.

24 I was the stringer for Time in 1980 -- '75
25 and she was the stringer in '76. So we go way back.

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1 She's an extremely careful reporter. And so she
2 reported that there was a predecessor incident in Las
3 Vegas. Is that dispositive, no. Is it an interesting
4 data point, it's an interesting data point. It's not
5 one I came up with or knew or was in a position to
6 investigate.

7 BY MS. ERB:

8 Q Thank you.

9 I have one point I wanted to just confirm
10 was a typo in your report and we're switching gears
11 entirely here. If we can go to section 8.84 which is
12 on page 109.

13 MS. ERB: And if we can bring up tab 78 and
14 mark it as Exhibit JW14.

15 (Winer Exhibit JW14 was marked for purposes
16 of identification.)

17 BY MS. ERB:

18 Q So in 8.8.4.1 on page 109, you are quoting
19 errata from the deposition of Mr. Galloway who was
20 deposed by plaintiffs in this case. And the part of
21 the quote I'm focusing on is the second sentence
22 beginning the requirement that charity accounts at
23 banks in Saudi Arabia be used to support charitable
24 activities was not in effect before May 23rd, 2003. If
25 we can look at the actual errata.

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1 A Um-hmm. It should be corrected to whatever
2 the actual errata says of course.

3 Q Okay. So --

4 A I don't -- I don't have that in front of
5 me.

6 Q Okay. That's fine if we agree that it can
7 be corrected --

8 A It absolutely should be corrected to
9 whatever the actual statement says of course.

10 MS. ERB: Okay. So what I'd like to do if
11 it's okay is we can take a break. I want to -- I think
12 we're getting close. I may have a few last questions.
13 So if we can take ten minutes, please. We can go off
14 the record.

15 MR. CARTER: Sure.

16 THE VIDEOGRAPHER: Off the record at 3:23.

17 (Deposition recessed at 3:23 p.m.)

18 (Deposition resumed at 3:35 p.m.)

19 THE VIDEOGRAPHER: Back on the record at
20 3:35.

21 MS. ERB: Mr. Winer, thank you very much
22 for your time today. We have no more questions.

23 MR. CARTER: And I have no questions today.
24 And with that, we will close the deposition. The
25 witness reserves the right to read and sign.

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1 THE VIDEOGRAPHER: We're off the record at
2 3:35.

3 (Deposition was concluded at 3:35 p.m.)
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CERTIFICATE OF DEPONENT

I hereby certify that I have read and
examined the foregoing transcript, and the same is a
true and accurate record of the testimony given by me.

Any additions or corrections that I feel
are necessary will be made on the Errata Sheet.

Jonathan M. Winer

Date

(If needed, make additional copies of the Errata Sheet
on the next page or use a blank piece of paper.)

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[illegible]

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CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

I, Steven Poulakos, registered Professional Reporter, the officer before whom the foregoing proceedings were taken, do hereby certify that the foregoing transcript is a true and correct record of the proceedings; that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 12th day of January 2024.

My commission expires:

May 31, 2024



NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

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